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USE OF CONSULTANTS AND CONTRACTORS BY THE ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF ENERGY

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

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USE OF CONSULTANTS AND CONTRACTORS BY THE ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF ENERGY

MONDAY, NOVEMBER 6, 1989

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor, Kohl, and Stevens.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Ladies and gentlemen, the Subcommittee will come to order.

I am very hopeful that Senator Stevens of Alaska, the ranking Republican of this Subcommittee, will join us this morning. It is on his agenda. He has expressed a long-time interest in the issue. We will proceed now and hope that he will be able to attend this morning.

Today's hearing is one of a series examining basic changes in the way our government functions. The central issue today is: "Who is actually running the government?" Today we will focus on the Department of Energy and the Environmental Protection Agency.

In a February hearing, we found that EPA relies on contractors to do everything from rule writing to rule enforcement. Today we are going to explore the public's right to know basic information about EPA's contractor work force.

In 1980, we found that DOE's reliance on contractors to perform its basic functions was so extensive that it appeared that contractors were becoming the backbone of United States Government.

This June, Secretary Watkins candidly confirmed that this prophesy seems to have come true. I quote: "Energy chief," a newspaper headline declared, "says top aides lack skills to run U.S. bomb complex." In light of Secretary Watkins' statement, I asked my staff to revisit this Department.

A large portion of the DOE budget is spent on contractors who operate our nuclear weapons facilities. I wanted to know whether the Government, in this case DOE headquarters, had the in-house knowledge and skills needed to manage these contractors as well as all other DOE programs and functions.

I am inserting in the hearing record the Subcommittee staff report which describes our findings. I can tell you this is a splendid report. I want to applaud the staff for its many, many hours of work on its preparation.[1]

We found that DOE relies on its private work force to do the daily work of preparing official plans, budgets, and even Congressional testimony. It relies on contractors to monitor arms control negotiations, to work on and support international treaties, to help prepare decisions on the export of nuclear technology, and to conduct hearings and appeals and challenges for security clearances.

Even more disturbing, we found that the means of controlling this contractor work force is inadequate for at least four reasons.

First, DOE's official justification for its use of consultants show that the choice is driven by limits on the size of the civil service work force, without regard for whether they are capable of managing and controlling the contractor work force. Remarkably, the Department of Energy not only uses consultants to do its basic work, but does so without even considering whether the same work could be done more efficiently by federal officials or federal employees. Congress spends weeks and weeks deliberating and debating whether Federal employees should get a 2 percent or a 3.6 percent pay raise, but we provide literally an open money sack to agencies to hire consultants and private contractors.

Second, DOE top management does not have the most basic information about its private work force. DOE officials know exactly how many civil servants work in each office throughout the Department. However, the Department of Energy today cannot tell us how many contractors and how many consultants it now has, how much they cost, or how the cost compares to a Federal work force.

Third, officials with legal responsibility for contracts are themselves often unaware of the actual work being done. For example, DOE rules prohibit the use of contractors to prepare official congressional testimony. For many months, however, DOE has been paying a contractor based on monthly reports that claimed it was doing exactly that.

When the procurement office asked the office that uses the contractor for an explanation, it was assured that "no [contractor] efforts involved the preparation of congressional testimony." It took a congressional investigation to demonstrate to the legally responsible DOE officials that notwithstanding contract terms and official assurances, contractors are today involved in the preparation of the highest level DOE testimony.

Finally, the potential for a conflict of interest is unchecked in today's Department of Energy. I do not know which is more shocking, that Secretary Watkins' statement was prepared by BDM, a major defense contractor, or that the activities occurred on a routine basis, or that the Congress, the public, and even top DOE officials are blind to these problems.

Furthermore, DOE is well aware that many of its contractors also offer their services to private energy concerns at the same time they are doing the work for the Department of Energy. They

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[1] See p. 63.

also offer their services to foreign interests that are affected by DOE's international energy policy. Do these foreign interests have a concern or an interest which is in direct conflict to the policy of our own government? When DOE personnel responsible for conflict of interest views do not know what work is being done, the Department of Energy can hardly assure itself or the public that the potential for conflict is controlled.

Based on my 10-year, ongoing investigation, it is increasingly clear that we are not looking at isolated cases of abuse or problems that can be addressed by the promise of better management next time. Rather, we are looking at a fundamental, and I might say an invisible, and unexamined change in the way our government functions.

We welcome Secretary Watkins' candid observations earlier this year. We take his remarks as an invitation to ask some questions today that must be answered if we are to ensure the integrity of our government.

These questions might include these: Does top management know who its work force actually is?

Can top management assure the public that government officials and not a private work force are actually running the government and making major policy decisions?

Can top management assure the public that it is aware of and adequately controls the potential conflict of interest of its private work force?

Has DOE considered the relative manpower costs involved in giving its most sensitive work to private contractors?

Does the public have the right to know about the private work force that today helps run this government?

And finally, what steps must we take to assist Secretary Watkins in ensuring that he has an agency with an official work force capable of performing or monitoring its most sensitive work?

I have been looking at the government's use of consultants and contractors, as I have stated, for over a decade. I have seen a pattern of development which is of great concern to me. It is time, I think, to examine whether we have actually abdicated our responsibility to a largely unseen, unchecked, unmonitored work force of consultants and contractors.

Without public scrutiny, the taxpayers of this country will not know who to hold accountable when the government asks. This shell of a government may cause the public trust to erode.

As we all saw a couple of weeks ago, *Time* magazine had a picture of George Washington on its cover. The title of the lead article in that *Time* story asked us a question: "Is government dead?" I would simply answer that, no, government is not dead; but we have contracted it out to a private work force, unseen, unmonitored, and unchecked.

We do not know how much we are spending nor what we get in return for this private work force. This private work force is today making major policy decisions for the United States Department of Energy.

DOE and EPA are examples of what is happening government-wide. If we looked at Commerce, if we looked at HUD, if we looked at the Department of Defense, we would see those same patterns: a

reduced official work force where we know how many people are employed and in what function, and what their salaries are in addition to a private contractor work force that has grown dramatically and at alarming rates. Their influence and impact is becoming more and more significant.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Today's hearing is one in a series to examine basic changes in the way our government performs its daily work. The central issue is "Who is running our government?"

Today we will focus on the Department of Energy and the Environmental Protection Agency. In a February hearing, we found that EPA relies on contractors to do everything from rule-writing to rule enforcement. Today we will explore the public's right to know basic information about EPA's contractor workforce.

First, we will hear from the Department of Energy. In 1980 we found that DOE's reliance on contractors to perform its basic work was so extensive that it appeared that contractors were becoming the backbone of the government.

This June, Secretary Watkins candidly confirmed that this prophecy appears to have come true. "Energy Chief," a newspaper headline declared, "Says Top Aides Lack Skills to Run U.S. Bomb Complex."

In light of Secretary Watkins' statement, I asked my staff to revisit the Department. Of course, a large portion of the DOE budget is spent on contractors who operate our nuclear weapons facilities. I wanted to know whether we had equipped the government, in this case DOE Headquarters, with the in-house knowledge and skill needed to manage these contractors, as well as all other DOE programs. I am inserting in the hearing record the Subcommittee staff report which describes our findings.

We found that DOE relies on a private workforce to do the daily work of preparing official plans, budgets, and Congressional testimony. It relies on contractors to monitor arms control negotiations, to work on and support international treaties, to help prepare decisions on the export of nuclear technology, and to conduct hearings and appeals in challenges to security clearances.

Even more disturbing, we found that the means of controlling this contractor workforce are inadequate for at least four reasons. First, DOE's official justifications for its use of consultants show that the choice is driven by limits on the size of the civil service workforce, without regard for whether they are capable for managing and controlling the contractor workforce. Remarkably, DOE not only uses consultants to do its basic work, but does so without even considering whether the same work could be done more efficiently by officials. We spend weeks debating whether government employees should get a 2% or a 3.6% pay raise but we provide an open money sack to agencies for consultants. Second, DOE top management does not have the most basic information about its private workforce. DOE officials know exactly how many civil servants work in each office. However, DOE cannot tell us how many contractors and consultants it has.

Third, officials with legal responsibility for contracts are themselves often unaware of the actual work being done.

For example, DOE rules prohibit the use of contractors to prepare official congressional testimony. For many months, however, DOE has been paying a contractor based on monthly reports that claimed that it was doing just that. When the procurement office asked the office that uses the contractor for an explanation, it was assured that "no [contractor] efforts involve the preparation of congressional testimony." It took a congressional investigation to demonstrate to the legally responsible DOE officials, that, notwithstanding contract terms and official assurances, contractors are involved in the "preparation" of the highest level DOE testimony.

Finally, the potential for a conflict of interest is unchecked. I don't know which is more shocking, that Secretary Watkins' statement was prepared by BDM, a major defense contractor, or that these activities occur on a routine basis, or that the Congess, the public, and even top DOE officials are blind to the problems.

Furthermore, DOE is well aware that many of its contractors also offer their services to private energy concerns, and foreign interests that are effected by DOE international energy policy. When DOE personnel responsible for conflict of interest reviews don't know what work is being done, DOE can hardly assure itself or the public that the potential for conflict is controlled.

Based on my ongoing investigation, it is increasingly clear that we are not looking at isolated cases of abuse or problems that can be addressed by the promise of "better management next time." Rather, we are looking at a fundamental, but invisible and unexamined, change in the way in which our government works.

We welcome Secretary Watkins' candid observations earlier this year, and take them as an invitation to ask some questions that must be answered if we are to assure the integrity of our government. These include:

Does top management know who its workforce is?

Can top management assure the public that officials, and not a private workforce, are running the government and making major policy decisions?

Can top management assure the public that it is aware of, and adequately controls, the potential conflicts of interest of its private workforce?

Has DOE considered the relative manpower costs involved in giving its most sensitive work to private contractors?

Does the public have a right to know about the private workforce that helps run its government?

And finally, what steps must we take to assist Secretary Watkins' in ensuring that he has an agency with an official workforce capable of performing or monitoring its most sensitive work?

I have been looking at the government's use of consultants for over a decade. I have seen a pattern develop which is of great concern. It is time to examine whether we have abdicated our responsibility to a largely unseen workforce of consultants and contractors. Without public scrutiny, the taxpayers of this country will not know who to hold accountable when the government acts. This shell of a government may cause the public's trust to erode.

Senator PRYOR. Today we will have testimony from Donna Fitzpatrick, the Assistant Secretary for Management and Administration of the Department of Energy; and from David O'Connor, Director, Procurement and Contract Management Division of the Environmental Protection Agency.

We are honored this morning to have a member of our Subcommittee Senator Kohl of Wisconsin.

Senator Kohl.

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. Thank you, Senator Pryor.

I am pleased to be here this morning. And I commend you for scheduling this hearing on what is considered to be a very important issue, the use of contractors and consultants by Federal agencies. Clearly contractors are essential to the efficient operation of our Government. But we need to make sure that contractors do not cross over the thin line that separates policy implementation from policy making.

In the case of DOE and EPA, the two agencies which are the focus of this hearing, it is particularly important that contractor work be limited to carrying out government policy. The EPA is responsible for protecting our environment, which is increasingly in need of protection. DOE has very important responsibilities in the areas of domestic energy supply and nuclear weapons production. We are not talking about insignificant tasks. We are talking about the national defense and safe drinking water, among other things.

While it is true that neither agency could perform these important jobs without the experience and the expertise of the private sector, it is equally true that the potential for contractors to abuse this close relationship is enormous. It does not take a genius to know that the interests of private companies are not always the same as those of the country at large. When Government agencies start relying on contractors to formulate policy, it may well be that

the contractor's corporate stockholders are being better served than the general public.

We have all been hearing about how the public's trust in Government is eroding. I do not think most people would feel better knowing that Government contractors who have a financial stake in Government policy are sometimes in charge of setting that very same policy. I do not think they would feel entirely safe knowing that contractors may be making important decisions about the environmental protection and about national defense.

So I look forward to hearing from the witnesses this morning. And again, I commend our chairman for his continued interest and activity in this area.

Thank you.

Senator PRYOR. Thank you, Senator Kohl.

We will call Donna Fitzpatrick. Donna, I hope that that huge, 84-pound white notebook is not your opening statement.

We look forward to your statement this morning.

TESTIMONY OF DONNA R. FITZPATRICK, ASSISTANT SECRETARY FOR MANAGEMENT AND ADMINISTRATION, DEPARTMENT OF ENERGY, ACCOMPANIED BY LAWRENCE OLIVER, ASSISTANT COUNSEL FOR PROCUREMENT AND FINANCE

Ms. FITZPATRICK. Thank you, Mr. Chairman. I do have a formal statement I would like to submit for the record [1] and then make a few remarks.

Senator PRYOR. It will be printed in full in the record.

Ms. FITZPATRICK. Thank you.

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the Department of Energy's use of support service contractors.

First, Mr. Chairman, I would like to express my appreciation for the cooperation of the Subcommittee and your staff. The spirit in which your investigation has been conducted has been one of constructive criticism. I believe that this type of approach is one which has at its heart a desire for better government, and this type of approach is helpful to us, and it is good for the American people, because it will help us to improve and to do our job better.

From its inception, the Department of Energy and its predecessor agencies have relied by design on private-sector contractors to perform energy research, weapons testing and production, and materials fabrication functions. The Atomic Energy Act of 1946 permitted the use of management contracts for the operation of government-owned plants so as to gain the full advantage of the skill and experience of American industry.

In addition, the use of support service contracts also provides what we believe is an efficient and cost-effective approach to meeting the fluctuating and varying nature of the DOE's requirements. However, the use of support service contracts, as you have very well pointed out, is not without its difficulties.

The Department has a comprehensive system of management review and control for contractual support services. DOE Order

[1] See p. 39.

4200.3(b), Management of Support Service Contracts, which was issued in October 1985, provides practical internal procedures and policies by which these contracts are to be managed. The management process has been reviewed and is considered to be an effective mechanism, but it also requires continual updating and review.

DOE utilizes support service contracts to provide a wide range of technical and administrative services, as well as to provide advice and consultation to assist departmental managers and personnel in their development and execution of programs. Government personnel do review the contractors' work at various stages to assure that all policy and programmatic decisions are made by Government officials and also to control the contractor activities.

The Department has a formal process for conducting pre-contract award reviews and post-award reviews for training our employees. The training is mandatory for the employees who are responsible for managing the contracts and there are clearly enunciated policies and procedures to guide them.

However, we have 164 active support service contracts and approximately 1600 active task assignments in Headquarters alone. With this volume of activity, the management oversight and systems review resources are directed to areas of greatest risk and to specific problems of which we become aware. We are not able to do a comprehensive, every-task, every-contract, day-by-day management review.

The President has emphasized high standards of ethics in the procurement and use of contracts and Secretary Watkins has required strength in line management and contractor accountability. The Department's personnel are working diligently to carry out these directions. However, I must point out that Secretary Watkins, as you have noted, Mr. Chairman, has stated repeatedly that the Department has a serious problem in hiring and retaining sufficient numbers of qualified personnel to direct and manage its mission activities, particularly in the scientific and technical areas.

We are aware, therefore, that in these circumstances there is always the possibility that the Department can become over-reliant on its contractors and lack the resources to manage them as closely as we would like. I should also add, though, personally that in my 6 years at the Department, it has been my observation that policy decisions and program priority decisions are made by Departmental officials. However, it should also be noted that they are very often heavily dependent on inf -mation that has been produced at their direction by contractors. Therefore, there is no doubt that contractors are part of our day-to-day activities.

Under DOE 4220.4, the Organizational Conflict of Interest Processing Procedures, proposers are required to disclose any interests that they may have had, or are currently planning, that could relate to work contemplated by the solicitation. This includes investments, other DOE work, patents or other interests in the same or competing technologies, and ownership portions of companies that have such interests.

DOE personnel involved in the procurement process attempt to recognize inconsistencies and contradictions in the materials submitted by proposers and address it as required by law, regulation, and DOE policy. This area has been addressed in your investiga-

tion, and the investigators have pointed out to us some weaknesses in our management review, which we are now attempting to remedy.

In summary, Mr. Chairman, we believe that the Department has an effective process for procuring and managing support service contracts, including the training program for our employees. We have dedicated employees who are working diligently to achieve the excellence which has been demanded by the President and by Secretary Watkins.

Despite these efforts, problems do occur. We will continue our efforts to achieve excellence in this area, and we will work in a cooperative and open manner with this Subcommittee to identify and correct deficiencies and to seek the goal of better government.

The Department is greatly concerned about acquiring and retaining talented and capable managers and technical personnel to direct the Departmental mission initiatives especially in the areas of environment, safety, health, security, waste management, management of the weapons production facilities, and facility modernization. Having sufficient Federal employees with these skills is a prerequisite to the proper and effective use of support service contractors.

In conclusion, Mr. Chairman, the Department's concerns in the area of support services, I think, are basically consistent with the concerns of the Subcommittee. We appreciate your views and suggestions, and we look forward to continuation of this cooperative working relationship as we attempt to effectively carry out the Department's stewardship.

Senator PRYOR. Ms. Fitzpatrick, thank you.

Now, it is DOE policy that congressional testimony shall be prepared in-house by Federal employees, is that correct?

Ms. FITZPATRICK. That is correct, Mr. Chairman. Our Directive requires that the initiation or origination of congressional testimony be the role of the Federal employee that is correct.

Senator PRYOR. Now, did Secretary Watkins know on April 3, 1989, that his testimony before the House Defense Nuclear Facilities Panel was in fact written by a contractor?

Ms. FITZPATRICK. I do not know whether he knew it or not. I doubt it.

Senator PRYOR. What would he have thought if he had been informed that that testimony was prepared by a major defense contractors, BDM?

Ms. FITZPATRICK. Well, I know his reaction when he was told that was——

Senator PRYOR. Please tell us what that reaction was.

Ms. FITZPATRICK. He was very unhappy.

Senator PRYOR. Is this an isolated incident, or does this happen routinely?

Ms. FITZPATRICK. From my understanding of that particular occurrence and my experience, I think it was an isolated situation.

It is certainly common when testimony is being prepared for a contractor to be asked to develop certain information, to do research on past documentation, and to put some materials together for the Federal employee who is responsible for drafting. After the draft is completed, it is then circulated throughout the Department

and to other agencies. It often is extensively rewritten, comments are made, and finally it goes through an OMB review.

So I think that even if words were put into a draft by a contractor, or suggested by a contractor, that is certainly not the last review it gets. They have to be approved and adopted by the officials in the Department.

But I think the fact that apparently in that instance, a contractor actually wrote a complete piece of testimony that survived, with I think some changes, but survived in recognizable form to be the final testimony, has given us concern in the Department. And we have undertaken to make it very clear that possibly we may have to change our Order, that that is not an acceptable mode of operating.

Senator PRYOR. Now, you say that it is against the policy of the Department of Energy to have private contractors or consultants preparing congressional testimony. That is your statement?

Ms. FITZPATRICK. To put it as baldly as that, Mr. Chairman, yes. To assist in the preparation at the direction of a Federal employee by developing certain sources of information is permitted. But, simply to say, preparing the testimony, that is not acceptable.

Senator PRYOR. We have stacks of billings or justifications, I guess you would call them, for payment from private consultants and contractors to the Department of Energy. You are aware of this. This is no secret.

Ms. FITZPATRICK. Yes, sir.

Senator PRYOR. In many, many of these justifications the contractors state that they are involved in the preparation of congressional testimony. They also state that they are involved in other items like personnel issues, and doing studies for consultant use.

Who reads all these justifications?

Ms. FITZPATRICK. That is an issue that has been recently looked at by the procurement office. A program official who is responsible for directing the activities of the contractor should be looking at these justifications and agreeing that, in fact, is what the contractor has been doing and that is a proper exercise of the contractor role.

Our informal conclusion, in looking at what is actually happening, is that we need to have some documentation that that occurs on a regular basis. For example, I would suggest—and this is not yet a departmental decision, but my personal opinion—that, if a contractor puts in a monthly report and that is the basis for his being paid, a Federal employee should review that report and be satisfied that that was, (a) what the contractor really did, and (b) that it was within the proper role of the contractor, that is the contract is not being abused.

And there should be a signature that says that that has been reviewed. And I do not think that that is happening now, I think that is a weakness.

Senator PRYOR. Are there enough Federal employees left in the Department of Energy to perform this function?

Ms. FITZPATRICK. There you have hit another part of our problem, Mr. Chairman. I could not tell you that there are. I think that many of our employees are stretched very thin. And it takes people to review what other people are doing.

Senator PRYOR. In 1980, there were 20,000 Federal employees hired by the Department of Energy. As of the close of business on the last day of September of 1989, there were 16,005, basically 4,000 fewer Federal employees.

Ms. FITZPATRICK. That is right.

Senator PRYOR. How many more consultants and contractors work for the Department of Energy today than worked for the Department of Energy in 1980?

Ms. FITZPATRICK. I do not have that figure, Mr. Chairman. I will get it for you. Anything I give you today would have to be a guess. I would guess the number has not gone down.

Senator PRYOR. Has not gone down?

Ms. FITZPATRICK. I would guess that.

Senator PRYOR. Would you assume it has gone up?

Ms. FITZPATRICK. It is probably a fair guess, too. But we will get you the numbers, as we have them, for the record.

Senator PRYOR. Do not promise me that so soon. Because I do not think you can fulfill——

Ms. FITZPATRICK. I will try to get you the numbers.

[The following information was subsequently submitted.]

You are right. We are unable to construct a reliable comparison with a 1980 number. The 1980 figure took into consideration grants and other financial agreements. We do not include numbers from these agreements today. We have derived the current numbers from either (1) dividing the total number of staffhours in a contract by 2080 hours (2080 hours per FTE); (2) dividing total FY 1988 contract obligations by an estimated average cost per FTE of $77,400; or (3) with the management and operations (M&O) contractors, an annual employment survey. Presently, the Department of Energy (DOE), in the broadest sense, receives contractual assistance ranging from mail services to highly technical research and development activities. Because figures have not been compiled for FY 1989, we are only able to provide numbers for FY 1988. In FY 1988, DOE estimates 163,600 FTEs were provided in contractual support services. This figure is composed of a number of distinct categories of support,

As of September 30, 1988, DOE M&O contractors, which include the national laboratories, employed approximately 127,000 people. In addition, there were an estimated 19,500 FTEs associated with businesses supporting the M&Os directly as subcontractors. DOE estimates approximately 17,100 FTEs were provided in FY 1988 through support services contractual agreements involving research and development, advisory, consulting and other assistance. The 17,100 support services FTEs are broken down as follows: 8,500 associated with research and development activities; 1,200 for advisory and assistance services (special studies and analyses); and 7,400 FTEs associated with administrative support services (mail delivery, ADP, custodial and security).

Senator PRYOR. I have been trying to get these figures for 10 years. I hope you can get them in 10 days.

Ms. FITZPATRICK. I understand, Mr. Chairman. And I also have to admit that there is a problem that you pointed out in your statement, and that is that we do not keep head counts of contractor employees the way we keep head counts of Federal employees. What we are paying a contractor for and the way the contracts are normally written is really for man hours. Therefore, a contractor will report to us ten manhours were expended on this task, and we do not know whether he had five people working for 2 hours or one person working for ten hours. So that is a problem for us.

Senator PRYOR. Now, this is an area that Senator Stevens has expressed a great deal of interest in the past. What do you basically

allocate for a man hour for a contractor and a man hour for a Federal employee?

Ms. FITZPATRICK. The contracts are written as man hours for a senior management-type person, a technical-type person, support people like secretaries, and that kind of thing. So the contract is split among those different levels.

We have a rule of thumb that we use for Federal employees, as when we are developing budgets. And, in the Department of Energy, we assume that a Federal employee, on average, will cost the government, including benefits, about $55,000.

I would have to tell you that we did a comparison very recently of what it cost to hire a Federal employee at different levels, senior-management, mid-management, GS-7 and so on and what we pay a contractor for a comparable type of people, and we pay contractors more. There is——

Senator PRYOR. How much more? Twice? Three times?

Ms. FITZPATRICK. Oh, no, oh, no, not twice. It was 20 percent, 25 percent, those kinds of differentials. But it is a substantial differential.

Let me give you the figures in a minute here.

Senator PRYOR. Yes, thank you.

I recently brought this to the attention of the full Committee, it's an ad in the *Washington Post* by a local, contracting firm looking for people to help write DOE testimony. This firm was actually soliciting people to help write DOE testimony.

Ms. FITZPATRICK. Yes, I am aware of that ad.

Senator PRYOR. This prompted the DOE procurement director to ask if contractors were actually doing this. The program office responded: "We are confident no contractor efforts involve the preparation of congressional testimony. We are in agreement with you that the contractor is not authorized to perform these services under its DOE contract."

Now, let us just get straight here. Should the boss know whether a contractor is being used by his office to prepare DOE testimony?

Ms. FITZPATRICK. I think yes.

Senator PRYOR. Why do you think yes?

Ms. FITZPATRICK. Because——

Senator PRYOR. Is testimony not policy?

Ms. FITZPATRICK. Yes, sir. Testimony is policy.

Senator PRYOR. Should private contractors make policy?

Ms. FITZPATRICK. No. That is just an idle opinion. Yes, I absolutely agree that testimony should not be drafted—that is, the first words being put down on paper by a contractor. I think that testimony, the outlines of the policy and the formulation of the expression of that policy, ought to come from Federal officials and be approved at the highest appropriate level.

And that is why I have earlier agreed that, in the particular instance that we are talking about, to have a contractor write out what became the full statement, even though in fact it was mostly drawn from previous statements of the Secretary and was almost a cut-and-paste job, I do not think that that is a good practice for us to be following, and I think we should not allow our contractors to write testimony, and should make it very clear to our employees, that that is not the function of a contractor.

Senator PRYOR. We have established the fact that BDM, a major defense contractor, prepared Secretary Watkins' statement before the House Defense Nuclear Facilities Panel.

Ms. FITZPATRICK. Apparently they did. And apparently they did it by basically compiling previous statements of the Secretary, putting paragraphs together, building around—I am told they had a draft of testimony written by a Federal employee, and that they looked at it and said the Secretary has made fuller statements in this area, let us add paragraphs from what he has already said and build up a fuller statement. In fact, apparently that draft is what went through departmental review. It was recognized as being an accurate statement of the Secretary's positions, and eventually was approved as testimony.

Senator PRYOR. Now, in that April 3 statement, Secretary Watkins proposed the development of a 5-year plan to basically clean up the nuclear weapons facilities.

Ms. FITZPATRICK. Yes.

Senator PRYOR. Had he enunciated that proposal before April 3?

Ms. FITZPATRICK. Publicly?

Senator PRYOR. Or privately.

Ms. FITZPATRICK. Yes, that had been discussed privately previously in the Department.

Senator PRYOR. All right. Did the Department of Energy check to see what other work BDM might ultimately receive from the 5-year plan that Secretary Watkins was proposing?

Ms. FITZPATRICK. I do not know.

Senator PRYOR. Was the Department of Energy aware that BDM was a major contractor of the Department of Defense and now owned by Ford Aerospace?

Ms. FITZPATRICK. I would have to say certainly people in the Department know that BDM is a defense contractor.

Senator PRYOR. Does this give you cause for concern that such policy was enunciated by a private defense contractor with potentially a great deal to gain?

Ms. FITZPATRICK. In this particular instance, Mr. Chairman, no, because I know when that 5-year plan began to be discussed in the Department and who initiated it. I did. When the Secretary first came to the Department, I told him what had been done in the Department up until then to assess our difficulties in the weapons area—that the figures that were being bandied about, as you know, $160 billion or whatever to clean up, are not budget-quality figures. We need to reduce what we know today to a definite plan that will give us year-by-year-budget-quality estimates of what it will cost, and we need to have those amounts built into a rolling 5-year plan.

Senator PRYOR. We have a summary of Admiral Watkins' statement before the House committee on our chart.[1] It has been established the statement was prepared by BDM, a major defense contractor. But this is not the only area in the Department of Energy that is using contractors.

Ms. FITZPATRICK. Oh, that is true.

Senator PRYOR. Let us look at the next chart,[2] if we might.

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[1] See p. 174.

[2] See p. 175.

Were you aware that BDM has continued to work on the 5-year plan?

Ms. FITZPATRICK. Yes.

Senator PRYOR. And has contracts for the 5-year plan?

Ms. FITZPATRICK. Yes.

Senator PRYOR. Does this concern you?

Ms. FITZPATRICK. No. Because I know that the decision to have a 5-year plan was something that was an internal departmental decision and that we then turned to contractors to help us gather information and develop the plans on how it could be done.

Senator PRYOR. All right. Let us go a step further. Let us get out of the area of nuclear facilities.

The Deputy Assistant Secretary for Conservation gave testimony on the least-cost utility plan initiative. That person was Mr. Streb. Was he your deputy at this time?

Ms. FITZPATRICK. What was the date of the testimony?

Senator PRYOR. The date of the testimony was 1987.

Ms. FITZPATRICK. 1987, yes.

Senator PRYOR. All right. Would it concern you if your own Deputy had had his testimony prepared by a private contractor?

Ms. FITZPATRICK. If the private contractor wrote it from scratch, I would be very concerned. If the private contractor developed information at the direction of a Federal employee, that then eventually was incorporated into testimony being written by a Federal employee, then I would not be so concerned.

Senator PRYOR. Why do you have to have private contractors to write official testimony for Congress?

Ms. FITZPATRICK. Well, Mr. Chairman, I think that that right there is the distinction that needs to be made. If they are actually sitting down with only the barest direction that, for example, there is going to be a hearing and we need some testimony, write something. That, I think, is wrong.

But if a Federal employee knows there is going to be a hearing and his job is to write some testimony, he may sit down and write the points that need to be covered, then he may outline it, to know he will need particular information. He may need to know, for example, what previous statements have been made by Departmental officials in the area? What are the statutory references that apply? What are the regulatory references? Someone is needed to go and do the legwork. He gives specific direction to a contractor to do that work. The contractor comes back with the information, and the Federal employee incorporates that into testimony. I think that is a proper procedure.

But in either case, somebody could say the contractor is assisting in the development or preparation of testimony. And if they get very sloppy, they can simply say the contractor is preparing testimony. And I think we have to be careful about two things. First and foremost, what we use a contractor for. As I have indicated, I think there is proper and improper use of a contractor. Secondly, in our description of what the contractor is doing, we have to be very careful to indicate how they assist us and not simply say they prepare the testimony.

Senator PRYOR. Ms. Fitzpatrick, I want to close out my line of questioning, and then I am going to yield to Senator Kohl and Ste-

vens. But before we leave the issue of sensitive defense-related items, and the area of conservation, both of which are critical——

Ms. FITZPATRICK. Yes.

Senator PRYOR. Functions of the Department of Energy.

Ms. FITZPATRICK. Yes.

Senator PRYOR. Let me move to another issue. How would you respond if I asked if is it a proper role for a private contractor to monitor the nuclear non-proliferation policy of our country?

Ms. FITZPATRICK. Well again, we are into the question of what exactly do we mean by "monitor"? And I am not——

Senator PRYOR. Have you heard of a firm ERCI?

Ms. FITZPATRICK. ERCI?

Senator PRYOR. ERCI.

Ms. FITZPATRICK. I am not sure that I have.

Senator PRYOR. All right. They do a lot of business with your Department.

Ms. FITZPATRICK. Okay.

Senator PRYOR. ERCI had a major contract with the Department of Energy to assist in the U.S.-Japan nuclear non-proliferation treaty. One area of concern was to help get this treaty passed in Congress.

ERCI has clients not only in the United States, this is their own annual report, but they work for Tokyo Electric Power and the Japanese Ministry of International Trade and Industry.

The Department of Energy has hired this firm to assist in securing the passage of the U.S.-Japan nuclear non-proliferation treaty. Is this a conflict?

Ms. FITZPATRICK. There is a potential for a conflict there, which we should know about before we make that award and keep in mind during the execution of the contract.

Senator PRYOR. Do we know what the contractor actually was hired to do? Because this American contractor has an affiliate in Japan which has as its clients Tokyo Electric Power and the Japanese Ministry of International Trade and Industry. Now, what were they hired to do, do you know?

Ms. FITZPATRICK. Off the top of my head, no, Mr. Chairman.

Senator PRYOR. Do you know who else this contractor might work for?

Ms. FITZPATRICK. No.

Senator PRYOR. Is there any way to know?

Ms. FITZPATRICK. Yes. When a contract is awarded, or is about to be awarded, the prospective contractor, is required to fill out what we call an Organizational Conflict of Interest form in which they must report any activities or interests they have which may be related to the work that they propose to do for the Department.

I mentioned earlier that we have turned up, with the help of your investigators, some difficulties and weaknesses in our use of those OCI reports, in particular I think there is a disconnect between—or possible discrepancies—between what a contractor says on that report, for example if he says he has no related interests, and what they tend to say in their own statements in advertising, to their stockholders, and in their technical proposals that they made to the department in order to get the contracts. And I think

we need to do a better job of reconciling those kinds of discrepancies.

Senator PRYOR. Do you request from these contractors a stockholders report or their advertising brochures?

Ms. FITZPATRICK. I do not know that we request those. But we do ask them, and they are required to give us financial reports under pain of, you know, penalties. I would think a possible penalty would be losing the contract.

Now, when we get that information, we have two things we can do. We can either avoid it entirely——

Senator PRYOR. You are getting as much paper as I am. Go ahead.

Ms. FITZPATRICK. They are tossing this at me. I am going to add it to my 85 pounds over here.

We ask for the 10-K. I am going to have to delve back into my legal memory and remember what the 10-K form is. I guess it is a statement of foreign interests. Is that what the 10-K is?

Could I ask Mr. Oliver, who is from my General Counsel's Office, to clarify this?

Senator PRYOR. Please feel free to come forward.

Ms. FITZPATRICK. Thank you.

Senator PRYOR. Would you state your name for the record.

Mr. OLIVER. Yes. My name is Lawrence Oliver.

Senator PRYOR. Yes, sir.

Mr. OLIVER. I am the Assistant General Counsel for Procurement and Finance, Department of Energy.

Senator PRYOR. Very good.

Mr. OLIVER. Basically in our Organizational Conflict of Interest questionnaire, we ask for a number of things, including the 10-K, which is the document that is filed with the Securities and Exchange Commission. It basically outlines the activities that the companies are involved in, which should not be inconsistent with their annual reports. So we do get that information.

Senator PRYOR. Do you have anyone with time enough to read all this?

Mr. OLIVER. I hope so. Basically—the answer is——

Senator PRYOR. Senator Stevens says that is why you hire consultants, so they can read the consultants' reports. That seems to be going on today.

Mr. OLIVER. The Office of General Counsel at one point reviewed all OCI statements. We stopped doing that because we did not have the manpower to do it. So we gave up that function about 8 to 9 years ago. And I believe that was in our previous testimony that was given in 1980.

Senator PRYOR. Now, did a private contractor, ERCI, with clients or an affiliate in Japan with possible conflict of interest, establish or help establish our policy in nuclear non-proliferation and help monitor the U.S.-Japan Nuclear Non-Proliferation Treaty? Yes or no?

Ms. FITZPATRICK. I do not know the answer to that, Mr. Chairman.

Senator PRYOR. Was Congress notified of DOE's position or that there was a potential conflict of interest by using this private contractor?

Ms. FITZPATRICK. Not to my knowledge. I would have to check the record.

Senator PRYOR. Senator Stevens, do you have an opening statement?

Senator STEVENS. I do not have an opening statement. Go ahead.

Senator PRYOR. Well then, Senator Kohl, do you have any questions at this point?

Senator KOHL. Thank you, just a few.

You seem like an unusually well-qualified person. What is your background? Have you been with the Department for quite some time or just recently?

Ms. FITZPATRICK. I have been there for a little over 6 years, the first 6 months of that as a consultant. Before that I practiced law. Before that I taught chemistry and mathematics.

Senator KOHL. Okay. I would like to ask you about these contractors and consultants. They are, as you know, largely responsible for carrying out DOE's technical jobs. And because policy decisions are often hinged on technical concerns, how does your agency determine when contractors are needed to provide information to members of Congress?

Ms. FITZPATRICK. As I mentioned earlier, Senator Kohl, we often turn to contractors to give us information that eventually will be used in coming to policy decisions. Specifically, when Congressmen ask for information, I would say that quite often we must in fact turn to contractors, not necessarily support service contractors, but very often our management and operating contractors, the people who run our large facilities. They have the day-to-day responsibility. There is a contingent of DOE personnel to manage that, but obviously we do not have a redundancy, that is, everything the contractor knows is not also in the head of a Federal employee. That is not the case.

And therefore, depending on the kind of information that is asked for by a Member of Congress, whether it exists in DOE files or is in a contractor-facility file—although I have to say those files belong to us, those are our files too, but we would ask a contractor to produce that information.

So it all depends on what information has been asked for and where that information resides as to whether a contractor will be asked to provide it.

Anything the contractor provides, before it is passed on to Congress should be reviewed by a Federal employee, and in my experience, at least in information I supplied to the Congress, it was reviewed by Federal employees.

Senator KOHL. Okay. Ms. Fitzpatrick, do you see the need for limiting contractors from coming to the Hill? Do you see the potential conflict of interest that arises when profit-seeking corporations come to Capitol Hill to provide "information"?

When does providing information cross the line into lobbying on behalf of a program or a project from which that contractor stands clearly to benefit? Do you believe that contractors can fairly present information in an unbiased manner on projects which are important to their own bottom line? Do you think they should be able to bill the costs of lobbying activities to their contract?

In other words, should the American taxpayer pay for contractors, for example, to fly into D.C. to lobby Congress on programs which will bring financial gain to their own company?

Ms. FITZPATRICK. This is a wonderful topic, Senator Kohl, and I am glad you raised it. It has been a matter of great concern to the Department for years, that its own contractors behave in an appropriate manner with respect to the Congress. And we have objected, sometimes strenuously, to what we know happens, and that is that contractors exercise their rights to deal with Members of Congress and give them information and promote programs. There is no doubt that certain contractors promote programs.

We have prohibited our contractors from charging us the expenses of trips to Washington, unless the information was directly requested by a Member of Congress, but we have a tension here. Congressmen have a right to information, too. And they have the right to the opinions of people who are government contractors about the value of programs or progress. You have a right to two sources of information. You should not have to have everything filtered through the Department of Energy either.

And therefore, I think there is an inherent tension that exists. But I would be foolish to say that people do not pursue their own interest. Contractors have interests. They are going to promote what they think is in their interest. And it is a constant battle to try to keep some sense of proportion in who pays for what and whose interests are being represented.

My feeling personally is that a contractor who takes the king's coin should pay some attention to what the king wants. And I do not look kindly on a contractor who, when departmental policy has been stated, for example, program priorities and budget priorities, then goes around and lobbies directly against what our policies are.

On the other hand, those policies are very rarely matters of unanimous opinion, certainly not in the Congress. And if a Congressman or a committee asks the contractor doing a project, what is your opinion of a project, I have heard from the Department of Energy, what is your opinion, he has every right to do that. And the contractor has every right to answer whatever he thinks. And I do not think we should try to stop that. You simply have to consider the source, as in everything else.

Senator KOHL. While we are looking for ways to try and improve the process, would one way be for a contractor in any and every case when he comes into a conversation about a project or whatever with a Congressperson, that at least you be notified of the fact that he was there so that you can, if necessary, monitor such conversation? It seems to me that it is a bad mistake to allow people who are particularly benefitting from any project to go and answer questions and lobby Congress people without you being given an opportunity if necessary to present the other side to that same Congressperson if you are concerned——

Ms. FITZPATRICK. You are my kind of Senator, Mr. Kohl.

Senator KOHL. That is the way I ran.

Ms. FITZPATRICK. Why do you not get him over on our side, Senator Stevens?

I would welcome that. On the other hand, I cannot demand it. The Member of Congress has a right to seek information where he wants.

Senator KOHL. Anyway he wants?

Ms. FITZPATRICK. That is right.

Senator KOHL. Okay. Well, let me ask you this question: are you suggesting, or have you been suggesting, that if you were allowed to spend $1 more in your Department, you could save $10 or $20 or $30? To what extent are we being penny-wise and pound-foolish in the way in which your Department functions with respect to budget?

Ms. FITZPATRICK. I am not in a position to say how much. And I do not think the savings are necessarily—that you would see a commensurate reduction in contractor work as you increased Federal employees and paid them enough so that you could get these people.

There is a legitimate use of contractors for fluctuating or specialized need for which we do not require permanent Federal employees. And it would not be a savings if we hired permanent people and then, most of the time, did not use them to their optimum capacity.

On the other hand, I think that you are being penny-wise and pound-foolish if you allow what the Chairman has described as this subtle, and sometimes not so subtle, slippage of knowledge, institutional memory, and information that leads to decision-making, to slip out of the hands of the Government. And I think that that is what the Chairman is talking about. I think that that is a very real danger.

It is a very false economy if that is being done as a result of policies to limit the number of Federal employees or to limit the pay of Federal employees.

Senator KOHL. Well, just as a practical question, all the costs that we are now associating with cleaning up many of our weapons plants, which over the years have not done what they are supposed to be doing, if we had the right oversight, would we not be talking about a great deal of money that we would now not be having to expend?

Ms. FITZPATRICK. We would not have to be expending it now. But a large part of it should have been expended in the past.

Senator KOHL. By whom?

Ms. FITZPATRICK. By the Department and its predecessors, to treat waste properly, for example, instead of just putting it into disposal pits. Although in some cases, nobody really knew what to do with it. Some of it we do not know what to do with today even.

So I am not sure that there always were real alternatives available. But at some point, certainly in keeping plants modern, in replacing facilities, investments would have been better made some years ago and we would not have to be making them today. It may have been cheaper to do it some years ago. You have inflation factors so nominal costs look bigger. But certainly you cannot escape, at some point, having to pay the piper. You do it now or you do it later.

Senator KOHL. I think one of the things our chairman is saying is that there is an enormous amount of money that is being ex-

pended unnecessarily because we have so many personally interested contractors involved in the process, and we do not have enough Government professionals in your Department. Are you agreeing? I would assume there is no dispute with that. Although you may dispute the amount of money we are talking about, you would not dispute the premise.

Ms. FITZPATRICK. I agree that it is an anomaly. It is strange that we have limits on what you can pay a Federal employee and virtually no limits—you pay what the market requires—on the contractors who are doing the work, which I think were within the guidelines for what should be done by Federal employees generally.

But they are doing work very often and developing information and having information that I would be more comfortable, if a Federal employee were doing. There is no doubt, as you pointed out, that the contractor wants to keep his project going.

He is answerable to his shareholders primarily. He is not answerable to the properly appointed and elected officials of the Federal Government, which a Federal employee is. And that is where you have the danger of whose interests are being pursued. When decisions are made with information that was developed by a contractor, there is always the danger that the information developed has——

Senator KOHL. Just to get what I think is the bottom line on this, it seems to me that every time a private contractor talks to the Government, he is always and reasonably so talking from his own point of view, that he is never talking from any other point of view except his own. And I am not saying this by way of criticism.

Ms. FITZPATRICK. That is the system, of course.

Senator KOHL. That is life. That is the way it goes.

Ms. FITZPATRICK. Every one of us talks from his own point of view.

Senator KOHL. Right.

Ms. FITZPATRICK. Yes.

Senator KOHL. So I would like to end by having a clearer understanding of how you feel about what happens when contractors come to lobby Government. Is it not true that the position from which they speak is their own, and that it is not the same in terms of profit and loss as the Government's position?

Ms. FITZPATRICK. That is right.

Senator KOHL. It is just a different game. The situation is adversarial. They have a service to provide, we want the service. We understand they want us to take the service at the highest possible cost.

Ms. FITZPATRICK. Right.

Senator KOHL. And that is why they are there. And we understand that.

Ms. FITZPATRICK. Yes.

Senator KOHL. Well, in order to decide whether or not we want that service, and whether we want that service at that cost, we have to be on the other side of the table and keep them from invading our side of the table. Any disagreement with that?

Ms. FITZPATRICK. I do not disagree with that at all, Senator Kohl. I think it is very important that these contracts be competed. There is concern that some contractors keep doing the same kind

of work year after year after year. And it is very difficult to say that they have not become entrenched in some ways.

So we have a problem re-competing contracts. Sometimes you can re-compete and it gets to be almost a vicious circle. The current contractor has so much experience that he can out compete almost anybody else on the block. And it gets so he only digs his trench deeper.

I know that has happened in certain circumstances. It is just reasonable, as you are discussing what actually happens in the real world, what you might reasonably expect. You would have to reasonably expect that that kind of thing can happen, and I think your points are very well taken.

And the rule is in this, as in everything else in life, consider the source, when people give you information, who is giving it to you and what are their interests. And I think we would be very foolish in the Department of Energy, and as you are pointing out, in the Congress, for everybody simply to take everything that is given to them at face value. You have to consider the source.

Senator KOHL. Thank you, Mr. Chairman.

Senator PRYOR. Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

I'm sorry I was late this morning, and I'm going to leave you soon because we are marking up the Defense Appropriations Bill today in conference, but I do have an interest in this subject, as you have had, yours from one perspective, mine from the other.

I have to tell you, Ms. Fitzpatrick, that I am one who believes that the Congress has caused the problems that you are having to answer to today: one, with personnel ceilings, and, two, with pay ceilings.

There is no way that you can keep the people with the institutional memory and the expertise on board at the salaries that Congress will allow you to pay, and there is no question that it costs the Government more by doing it through the process of these consultants.

I look around the room, and I see a great many people that I know who have served either in Government, in the military, or right here on Capitol Hill, all of whom have left and are working now in various consulting organizations and are doing quite close to what they did before.

Now, your statistics don't disturb me, because we've had those studies, and the studies show that there has been an exodus of those who are the most competent in Government who go to the beltway organizations and are paid considerably more. The only statistic I've heard so far that I disagree with you is that you think it is about 20 percent more than paying a Government employee. I think it is close to 50 or 100 percent more than what you are paying Government employees to get the same services through the contractor.

Ms. FITZPATRICK. If I can clarify that, Senator Stevens. I was talking about support service contracts, and our figures show that on average, on direct salary costs, excluding benefits and overhead, we would pay for someone who would be the equivalent, perhaps, of a GS-15, we would pay them in the Federal Government about

$67,000; we would pay them in the private sector between $77,000 to $100,000.

And I can give you some figures that work on down to senior and mid-level and junior positions. Now, that's for support services.

In our M&O contractors, you are absolutely correct. The senior management of our M&O contractors, for example, the Director of a National Laboratory, is getting paid up to twice as much as some of the people to whom he is reporting in the Department.

Senator STEVENS. I'm not sure my friend, the Chairman, is going to join me—he may, though. But I'm working on a new proposal that would require that before the Congress mandate the preparation of a report there be a cost and manhours statement accompanying that report, and the offeror of the amendment to require the report is going to have to show that the money is in the budget and the manpower ceilings will permit the preparation of those new reports.

One of the things your Department has to face is a staggering number of reports for every Committee in Congress without any budget increase. As a matter of fact, the Chairman's statistics showed you had a 4,000 decrease in employees since 1980, and I'd be willing to bet that you have had a doubling of the requirement of reports since 1980. Now the Chairman is justifiably concerned about the role of the consultants, but the responsibility for the increased role of consultants ultimately goes back, unfortunately, to the voters and taxpayers. They say we should not raise salaries. Congress has tied its salaries to your salary.

Incidentally, the Chairman just asked me about an attempt we made at one time to tie defense contractors pay to no more than the Administrative Assistant Secretary of each Department received. That amendment lasted about 30 days. It was my amendment.

Ms. FITZPATRICK. Well, if you want to raise the Administrative Assistant Secretary's salary, I wouldn't object to that either.

If I can say, Senator Stevens, I think your points are very well taken, and I can't resist telling you that last year on one of those wonderful reports, and we do, I think, have to do too many reports, I was wondering whether anybody would ever read it, so I put a note in the front, right in the Executive Summary, that said, "If you are reading this report, please call this number," and put down my office number. Nobody ever called. I don't think anybody reads a lot of those reports.

Senator PRYOR. We sent it to a consultant, I imagine.

Ms. FITZPATRICK. Well, he didn't call either.

Senator STEVENS. I was just going to get to our consultants. We have the same problem.

Ms. FITZPATRICK. Yes.

Senator STEVENS. I shudder to think that any Senator would present a bill, or read a statement on the floor that was totally prepared by a consultant.

Ms. FITZPATRICK. Sir, my testimony today was totally prepared by the Department of Energy employees, but I think you're right. It's an invasive, pervasive problem, and I think we're being very penny-wise and pound-foolish, as Senator Kohl pointed out.

Senator STEVENS. Well, I don't know how to keep these people who have the expertise and the institutional memory available to the Government with the competitive salaries that are available in the private sector, and even to some international concerns now, without the use of the consultant device today.

As much as I agree with it, Mr. Chairman, I abhor the continued growth. But, until we can readjust the pay schedules and readjust some of the workloads and take it upon ourselves not to burden employees who should be doing other things but the preparation of these reports that do go on shelves, I think we are going to have to continue to answer questions.

You have been an excellent witness, and I appreciate the manner in which you are answering the questions. I only wish we had an answer for you, but I don't have an answer.

Ms. FITZPATRICK. Thank you, Senator Stevens. I very much appreciate your remarks.

Senator PRYOR. Senator Stevens and I have talked about this for years, and held hearings together whether he was chairman or I was chairman, and I think are trying to accomplish the same thing.

Let me make an observation that one of the reasons that there is an imbalance between private contractor and Federal employee salaries is because many of these private contractors work for the Federal Government; we have no checks on their use, there is no accountability in that system. Many of the contracts are sole source. As I said in my opening statement, it's an open money sack.

So, therefore, Senator Stevens is right. Congress is responsible for some of this but responsible in maybe a different way. We have created a new industry, which our own system cannot compete with, because we fuel this new industry with unquestioned dollars, when we fight about whether a Federal employee is going to get a 2 percent or 3.6 percent raise. We never ask what the consultant is going to get. It's almost unlimited.

Ms. FITZPATRICK. That's right. It's a market competition, and therefore, as they bid it up, there is no limit.

Senator PRYOR. Right.

Senator STEVENS. I don't disagree with that, Mr. Chairman, but I don't think it's unique to Washington. You can go to Juneau, or Little Rock, or Sacramento, or Albany, and find the same group of consultants around State or local government that you find right here, and it is a function of competitiveness, and our Governmental salaries are not competitive. We thought we had comparability, but we do not.

Until you can get to the point wherein you can keep those nuclear physicists and the mathematicians and also keep some of these people who know how to prepare testimony and prepare the woodshedding that takes place in trying to put a Secretary some of the routine that he is going to face, particularly a new Secretary, in terms of the questions he's going to face, and how those should and could be answered, I think you are going to continue to have the problem.

I know it's a great dilemma, but my problem is, I don't know any other way you can get it done right now, in terms of running the job of a Department such as yours.

With that, I've got to leave you. My time has ended.

Senator PRYOR. Thank you, Senator Stevens.

Let me follow with a few more questions here, Ms. Fitzpatrick.

Tell me, does the Department today know how many consultants or contracts there are with DOE?

Ms. FITZPATRICK. Yes, we know numbers of contracts, yes.

Senator PRYOR. Okay, how many?

Ms. FITZPATRICK. Well, for headquarters alone, for support service contracts, the number is 164.

Senator PRYOR. And then these companies subcontract out?

Ms. FITZPATRICK. Oh, yes, each of the companies can subcontract. However, we have limits on how much can be subcontracted. We don't want our prime contractors to amount to fronts, for example; and we do review that.

Senator PRYOR. You're talking about in headquarters, 164 contracts?

Ms. FITZPATRICK. Yes, sir.

Senator PRYOR. Prime contractors.

Ms. FITZPATRICK. That's right.

Senator PRYOR. How many contracts are there throughout the Department, not just at headquarters?

Ms. FITZPATRICK. I would have to get that figure for you, because there is some contracting authority in some of our field organizations.

[Information subsequently submitted follows:]

The Department of Energy (DOE) had 586 active support services contracts for research related activities, advisory and assistance services and other support activities in FY 1989. Many of the contracts either specify levels of staffing services (mail room activities) or are available for special one-time analyses and short-term support services. Other support services contracts, however, require a specific product or other deliverables.

Senator PRYOR. Of the 164 headquarters contracts, how many are sole-source?

Ms. FITZPATRICK. Out of the 164 headquarters contracts, only seven were awarded on a sole source basis.

Senator PRYOR. You have different rules for a sole-source contract?

Ms. FITZPATRICK. Oh, yes, the sole-source contract has to be justified. We have to follow the rules of the Competition in Contracting Act.

Senator PRYOR. Do you know what the average length of the contract period for these 164 contracts might be?

Three years? Five years? One year?

Ms. FITZPATRICK. If I may, I would like to supply that for the record.

[Information subsequently submitted follows:]

The average length of the 164 support services contracts awarded by HQ Procurement Operations is 5 years. The 5-year award typically consists of a contract base period of 2 years, with three 1-year options. Awards of support services contracts for periods in excess of 5 years are not authorized. In some instances, a support services contract is awarded that has a period of contract, with options, for less than 5 years. This is done when the Department does not anticipate a need for the support services beyond 2 or 3 years.

Senator PRYOR. How many manhours are involved throughout the Department of Energy in all of the contracts that you have?

I am not talking about just consultants but private contractors. I'd like an estimate on that, if I could get that.

Ms. FITZPATRICK. Fine. I will supply you with what we can give you.

[Information subsequently submitted follows:]

The Department of Energy (DOE) does not identify its contractors' efforts in terms of manhours, but rather in terms of full time equivalents (FTE). An FTE is the equivalent of 2080 hours. It is our rough estimate that we received approximately 164,000 FTEs in support of DOE programs from the management and operating contractors, which include the national laboratories, and their subcontractors, and directly from support services contractors in FY 1988.

Senator PRYOR. Now, many times our Subcommittee staff has gone to DOE, and other departments of the Government, and asked for contractor work product. We've asked for the work product, for example, of DOE's budget presentations to Congress, the Secretary's report to Congress, and Presidential reports.

While Congress can get this information, private individuals are met by a stone wall. DOE says well, this is the Freedom of Information Act. And we can't give out information about a private business, and we don't give out work products.

Now, is anything being looked at in your particular Department to deal with this area?

Ms. FITZPATRICK. Are you referring to a request made to a company, to a contractor?

Senator PRYOR. Sure.

Ms. FITZPATRICK. To produce work product?

Senator PRYOR. That has been used in the development of testimony or attended hearings or whatever.

Ms. FITZPATRICK. To supply what they gave to the Department?

Senator PRYOR. That is correct. The work product.

Ms. FITZPATRICK. I would have to look into that and see where the lines have to be drawn.

Senator PRYOR. They tell us they are covered by the Freedom of Information Act, and they don't have to give us this.

Ms. FITZPATRICK. Yes, but there are some exceptions to the Freedom of Information Act which would allow, under certain circumstances, if you follow the proper procedure for information like that to be released.

Senator PRYOR. Now, what we are trying to ascertain is, if the Department or the company is required to tell the Congress what private contractor is involved in the preparation of the testimony or policy positions?

Ms. FITZPATRICK. If I may, I would like to get an answer for you for the record of what our policy and what our understanding of

the applicable statute is, because I can't answer immediately as to what the restrictions are.

[Information subsequently submitted follows:]

It is the policy of the Department to comply with Congressional requests for information to the fullest extent. This would include providing information to a Committee or Subcommittee of Congress with jurisdiction over the Department, regarding activities involving Department of Energy contractors, such as their assistance in the preparation of testimony or policy.

Regarding the applicability of the Freedom of Information Act (FOIA) to Department of energy records, that Act provides that any person may obtain access to agency records unless they fall within one of nine exemptions. These exemptions, however, cannot be invoked to withhold records from a Committee or Subcommittee of Congress which has jurisdiction over the Department.

Although an agency cannot withhold information from Congress under the FOIA, the Act does not apply to contractors of the Department. Unless the Department owns the records generated by the contractor pursuant to a provision of the contract, or the agency has obtained possession of such records and maintains them in the agency's files, contractor records are not subject to the access provisions of the FOIA.

Senator PRYOR. Now, tell me, Secretary Watkins has recently announced the formation of something called "Tiger Teams." I like that. That sounds good.

What's a "Tiger Team"?

Ms. FITZPATRICK. The Tiger Team is a group of 20 to 25 persons under the leadership of a DOE employee and it may include some contractor employees, but it is under DOE management—which is assigned to visit one of our sites for 2 or 3 weeks perhaps and to give the Secretary an assessment of the present condition of that site with respect to environmental and safety concerns.

Senator PRYOR. Am I correct in saying that the environmental team is the largest part of the Tiger Teams?

Ms. FITZPATRICK. That's the main focus, yes.

Senator PRYOR. It is my understanding that most of these members of the Tiger Team are monitoring environmental contracts and nuclear weapons facilities. Aren't the great majority of these private contractors themselves?

Ms. FITZPATRICK. No. My understanding is that the majority of the team is Federal employees.

Senator PRYOR. I think the environmental subteam is made up of a majority of private contractors.

Do you know if any of these private contractors also work for private energy companies?

Ms. FITZPATRICK. That I don't know.

Senator PRYOR. Would there be a way to supply that for the record?

Ms. FITZPATRICK. Yes, we'll get what information we can and supply it for the record.

[Information subsequently submitted follows:]

With respect to the environment subteams, assistance to DOE is being provided by the NUS Corporation and its subcontractor, ICF Technology, and by the Argonne National Laboratory. To the best of our knowledge, NUS and ICF Technology have dealings with energy firms and we have taken steps to ensure that there is no conflict of interest in the work done for the Tiger Teams. The NUS Corporation is a consulting and engineering company specializing in environment and safety areas. Approximately half of NUS' revenues are derived from work with public bodies, principally Federal and state agencies. Of the remaining revenues, the bulk are derived from services to electric power companies, both publicly and privately owned. The principal services rendered to electric utilities are in the areas of design and

facility engineering, maintenance, training, and consulting on health and environmental matters relating to the construction and operation of nuclear and fossil fuel generating plants. In addition, some revenues are derived from a variety of similar consulting services for industrial clients, principally in the chemical and processing industries and from the production and sale of training video tapes. ICF Technology also provides similar services to private energy companies, principally in the area of environmental management.

The Argonne National Laboratory is operated for the Department by the University of Chicago, and is not working for private energy companies.

In those instances where the Tiger Team support contractors have worked for a DOE Operations Office or the Management and Operating (M&O) contractor at a DOE facility, steps have been taken to assure that there is no conflict of interest. For example, the NUS Corporation is a major technical support contractor for the Savannah River Operations Office. They provide technical assistance to the Operations Office for environmental, safety and health oversight programs. NUS will not provide technical assistance to the Tiger Team which assess environment, safety and health conditions at the Savannah River Site.

It should be noted that the Tiger Team Assessment Program is an internal management tool, designed to assist Department of Energy top management in assuring that its facilities are being managed in a manner which is consistent with environment, safety and health regulations and requirements. It is not a substitute for external reviews or inspections by Federal, state or local regulatory agencies.

Senator PRYOR. Would the compensation for the Federal employees on these Tiger Team be the same compensation for their teammates from the private sector?

Ms. FITZPATRICK. The Federal employee is being compensated at his rate of pay according to the Federal schedule. What a consultant or contractor member is being paid would depend on the contract he has with his company and the contract that company has with the Department of Energy, and as I have indicated that could very well be more than for a comparable Federal employee.

Senator PRYOR. Ms. Fitzpatrick, you could walk out tomorrow to any one of the major contractors or consulting firms within a 5- or 10-mile radius from this building, and you could probably name your price to go to work, and you know that.

Ms. FITZPATRICK. Yes, sir.

Senator PRYOR. I know this.

Ms. FITZPATRICK. So why am I sitting here? [Laughter.]

Senator PRYOR. If you worked for one of those private contractors, wouldn't you relish the idea of being on, for example, this environmental team, if your company also represented some of the major private energy companies of the country?

Ms. FITZPATRICK. Who might eventually get a contract to clean up the waste?

Senator PRYOR. Yes. Wouldn't you relish this?

Ms. FITZPATRICK. I would consider that a career opportunity.

Senator PRYOR. You'd be wearing two hats representing two interests, however.

Ms. FITZPATRICK. It's exactly what Senator Kohl pointed out earlier: People have their private interests. We have a constant tension between a contractor, private sector person pursuing his interests and what he may, at some time in the future, see as a benefit to be gained by the work he's doing for the Government, and the immediate interests of the Government in asking him to give us a report on conditions at our site.

We are aware of that, and we try, we have had a couple of instances in which we have tried to set up screens and controls on

the exact assignments that would be given to contractors working on Tiger Teams to try to avoid those kinds of conflicts.

But I would be foolish to sit here and tell you that people gaining experience, knowledge, and information, whether they are Federal employees or private employees, will not ever use it in later jobs or careers to their benefit. That's foolish.

Why is it that I could walk out of here and command more than I can get——

Senator PRYOR. If you don't know, I'll tell you sometime, all right?

Ms. FITZPATRICK. I think——

Senator PRYOR. Well, you have a great background——

Ms. FITZPATRICK. Sure.

Senator PRYOR. You have a splendid reputation in management with the Department of Energy, and above all you know a lot of people who are very, very key in policy decisions, so you are a prime candidate. However, I hope you will stay with the Federal Government and stay with this Department.

Let me ask this: we have, I'm sure, a fine Congressional liaison office representing the Department of Energy. However, we have many DOE offices using their own consultants and contractors to read and analyze the Congressional Record on a daily basis, to attend hearings, and I assume that DOE—I'm not going to ask anyone to stand and raise their hand—but I imagine we have DOE consultants and contractors in this very audience today being paid by the taxpayer to come and monitor this hearing. I hope not; however, I would not be surprised. These contractors are likely here to analyze what we are doing and to prepare responses maybe based upon some of the answers that you need to supply for the record.

Is this widespread? Is this just an isolated situation in the Department of Energy, or is this throughout the whole Government?

Ms. FITZPATRICK. I'm not competent to tell you what goes on in other agencies, but again——

Senator PRYOR. You talk back and forth.

Ms. FITZPATRICK. Sure.

Senator PRYOR. You have friends in other departments and agencies.

Ms. FITZPATRICK. I'd have to say it is common practice, as you noted, in the Congress and in the Executive agencies.

Senator PRYOR. Now, I would like to also talk about the Department of Energy using consultants to interpret rules, orders, and documents issued by the Department of Energy. Contract Task 3.1, calls on contractors to review these rules, orders, and other directives, and interpret what they mean.

Now, are you aware that contractors are being hired to interpret the orders of DOE?

Ms. FITZPATRICK. For what purpose, Mr. Chairman?

Senator PRYOR. For defense programs and to advise the Department of Energy what the Department has to do to comply with its own orders.

Are you aware of this?

Ms. FITZPATRICK. No, not specifically, Mr. Chairman.

Senator PRYOR. This area in the staff report, which will be a part of the record, is an issue that certainly needs to be looked at. I

know that you cannot monitor every contract, but some contracts appear to be let for the sole purpose of monitoring and interpreting DOE orders and task orders, rules, and regulations.

Now, let's talk about Booz-Allen & Hamilton. They are a major support contractor for the Department of Energy, correct?

Ms. FITZPATRICK. Yes, sir.

Senator PRYOR. In fact, in 1988, you asked Booz-Allen to study the adequacy of DOE information on consultants, as it related to OMB Circular A-120. Does DOE have the ability to perform an independent review of its information on consultants?

Ms. FITZPATRICK. Mr. Chairman, I think I have to qualify my answer to that question by saying, "Yes, but—." We could get Federal employees to do a particular job very often, but we have to have them stop doing another job. So if you ask me, could we do a study internally of our use of consultants, I think the answer would be "Yes, we could." I could find people and tell them, "Do this study," but they would have to stop doing something else that they are doing, which would probably then be done by a contractor or it would simply not get done. If it was important, something would suffer. So, with that qualification, I could say, "Yes." Is it something as a management decision I would decide to do if somebody asked me for a study on use of consultants? I'd have to know the consequences of that choice.

Senator PRYOR. All right. Let me ask this question. Booz-Allen performed this study on consultants and they are one of the major consultants to the Federal Government. What did they recommend?

Ms. FITZPATRICK. I'd have to say I am not familiar with that specific study.

Senator PRYOR. Do you know what that study cost?

Ms. FITZPATRICK. No, I don't.

Senator PRYOR. In awarding this contract to Booz-Allen, was there a discussion of the possibility of a conflict of interest? Here they were studying consultants, and they are one of the major consultants to the Federal Government, was that ever brought up? Do you know?

Ms. FITZPATRICK. No, I don't know.

Senator PRYOR. Do you know if this was a sole-source contract?

Ms. FITZPATRICK. No, I don't know the answer to that question, either, Mr. Chairman. I am told that this study was not a study of the use of consultants, per se; it was a study, if we are referring to the same one, of how we might develop a system to monitor and control the use of consultants, in other words, to try to get at the problem that you are talking about.

Senator PRYOR. What is the role of the private contractor and its relationship to the Department of Energy today in the area of security clearances?

Ms. FITZPATRICK. We do use private contractors to collect information regarding the security and background of individuals who are either up for clearance or for clearance reinvestigation and renewal, and that person functions as a kind of an information collector, hearing officer, if you will, who takes information from the subject of the security investigation and anyone else who wants to offer relevant information. That person, that contractor then puts

all the information together, supplies it to the Department of Energy official, where it is reviewed and only Department of Energy officials make decisions about security clearances.

Senator PRYOR. Am I correct in saying the private contractor holds the administrative hearing in this area?

Ms. FITZPATRICK. Yes, the private contractor sits there and receives information, hears arguments, makes records, compiles records and gives a report to the Department.

Senator PRYOR. Would you say this is one of the most sensitive areas of the Department of Energy?

Ms. FITZPATRICK. It is certainly a very sensitive area, yes.

Senator PRYOR. Is it legal?

Ms. FITZPATRICK. Is it legal to——

Senator PRYOR. To hire a private contractor to perform this major function?

Ms. FITZPATRICK. We have, I believe, asked the General Counsel to give us an opinion on that and they have found that our use of contractors in this role is legal.

Senator PRYOR. We, too, by the way, are staffed by a very small crew, but they are sort of a tiger team themselves, I want to compliment them.

Now, according to the Subcommittee's calculations, DOE is today paying its private contractor workforce about $130,000 per person in areas called legislative work. I hope you will think about this and maybe respond to it in some way. I wonder if the Department of Energy has done any study to see if it is paying contractors more than it would pay Federal employees for this basic work of government. Have you done anything like this?

Ms. FITZPATRICK. I am not aware of anything that is quite that comprehensive. The figures I gave you earlier I noted were exclusive of benefits and overhead costs, so $130,000 as an average sounds a little bit high, but I don't know whether——

Senator PRYOR. I think per person that would be high, $130,000.

Ms. FITZPATRICK. Yes, but is it——

Senator PRYOR. However, to the firm getting the contract, I think we are not going to be far from that $130,000 figure.

Ms. FITZPATRICK. Well, I would be very happy to review those figures with you, Mr. Chairman——

Senator PRYOR. Yes. Thank you.

Ms. FITZPATRICK [continuing]. And supply you with anything we have.

Senator PRYOR. Yes, and cooperate with our Subcommittee on it.

Ms. FITZPATRICK. Absolutely.

Senator PRYOR. I am wondering if you might have any recommendations for us. Senator Stevens has talked about raising salaries and that might help some, but what are your recommendations?

Ms. FITZPATRICK. I think that is definitely something that we have to get serious about and I agree with you, that 2 percent or 6 percent is not the issue. I think we do have to, as long as we are going to be using private contractor, recognize explicitly and manage very closely the kinds of inherent conflicts that we know are in that system and we have to be able to offer Federal employees a lot more than we can offer them now in salaries, benefits,

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and so on, so that they are truly competitive with the private sector. We know that, both with the support service contractor and our M&O contractors, not just salary discrepancies exist, but also the overall benefit packages and the things we can do for them is much more attractive in the private sector and we are going to get what we pay for.

Senator PRYOR. Yes. I guess I am sort of touting my own bill. I will hold a hearing on this in about 10 days, consultant registration legislation, which would require the private consultant, as a lobbyist does, to register and tell who their clients are. Would it help you to know who you are hiring and who else they work for?

Would it help you, for example, to know that some of the firms that you might be hiring might have very strategic economic interests in Japan or maybe work for OPEC?

Ms. FITZPATRICK. Yes, sir. Can we have more people to read those reports? I agree with you, that kind of information is things that should be known and known in a realistic way to people who have to make decisions, not simply on a piece of paper and a file, not simply constructively known—actually, practically known, and that requires people.

Senator PRYOR. How might we be able to work with you and your Department in achieving some of these, let's say, changes?

Ms. FITZPATRICK. Well, the Secretary, as you noted, has spoken quite plainly about his need for people, and people with certain skills. We are working with the Congress, with the appropriating committees. We appreciate very much this report we've had from you and from Senator Stevens, for example, on some of the amendments that have been offered, to try to get us some help in the salary area. We will continue to work with you, and I look forward to that, because I think that we have some systemic problems here. We are not talking about things a little bit around the edges. We are talking about a deep systemic problem that needs to be addressed, and it is certainly something that is much bigger than the Department of Energy and something that can't be done without the assistance of Congress.

Senator PRYOR. Ms. Fitzpatrick, you are not old enough to remember World War II——

Ms. FITZPATRICK. Thank you, Sir. You're right.

Senator PRYOR. I remember so well, as a youngster, during that period, that you had rationing cards——

Ms. FITZPATRICK. I've heard about them, yes.

Senator PRYOR. ABC, whatever. I'll tell you the truth, I can't remember if A was the priority but I remember so well that billboards were used during that period to get us to conserve energy. A question asked by those billboards, "Is this trip really necessary?"

I just think that in our Federal Government, we've got to start asking ourselves is this contract really necessary? Is this contractor really necessary?

I believe that many times if we stopped to think, we would answer in the negative. I think we will see that these contractors are creating for themselves, not only huge profits, but creating their own environment where they can thrive and whereby they frankly take advantage of the laxity of our laws and the lack of

accountability. It appears today that they have gone over the line and are really establishing policy.

This is where it gets, in my opinion, pretty scary. They are establishing policy, in your Department, in the Department of Defense, in EPA, and throughout the Government.

So, I'm concerned about it. I know you're concerned about it, and I want to thank you for your statement this morning and your cooperation. You have been a very splendid witness.

Ms. FITZPATRICK. Thank you, Mr. Chairman.

Senator PRYOR. Thank you.

We are now going to call Mr. David O'Connor, Director of Procurement and Contract Management Division, Environmental Protection Agency.

Mr. O'Connor, we welcome you this morning, and we look forward to your statement.

TESTIMONY OF DAVID J. O'CONNOR, DIRECTOR, PROCUREMENT AND CONTRACT MANAGEMENT DIVISION, ENVIRONMENTAL PROTECTION AGENCY [1]

Mr. O'CONNOR. Thank you, Mr. Chairman.

It's a pleasure to be here to continue our discussion with the Subcommittee on contracting matters that we know are of great concern to you. I know that you are particularly concerned about issues such as the extent to which agencies rely upon contractors.

I know you are concerned about whether contractors are performing inherently Governmental work, and I know that you are quite concerned about the potential for conflicts of interest within the EPA contracting community.

These are issues that we take very seriously at EPA. We are an agency that relies very heavily on contractor support; we have always been very open about that. The work that our contractors do is very important. It's safe to say that if we just took those contractors away overnight, the agency would not be able to operate.

Our contractors, however, do not perform inherently Governmental work. They do not make our decisions. They do not set our policies, and they do not determine program direction. Those decisions and those responsibilities are carried out, and always have been carried out, by EPA employees.

Mr. Chairman, since the last time we testified before the Subcommittee, a great deal has been going on in the agency to make it clearer that we are, in fact, dealing with these important issues, and I look forward to sharing them with the Subcommittee, if not in detail today, then certainly with your staff sometime in the near future.

Senator PRYOR. Mr. O'Connor, your full statement will be placed in the record. I appreciate your brevity and above all I appreciate your being here. I am going to ask a few questions, and if you don't have a ready response, we were going to leave the hearing record open for 10 days.

Do you know what percentage of the EPA's support contractors also offer their services to clients that are regulated by the EPA?

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[1] See p. 48 for Mr. O'Connor's prepared statement.

Mr. O'CONNOR. Mr. Chairman, I don't know the percent, but it is safe to say that it is probably most if not all of them who also work in the private sector. EPA's regulations cover just about everything out there, so I think it is safe to say that most of them, if not all of them, do also work for firms who are regulated by the agency.

Senator PRYOR. All right, when EPA uses a consultant or a private contractor to evaluate a hazardous waste permit, for example, does the public have the right to know what other interests that particular consultant or private contractor has?

Mr. O'CONNOR. Well, Mr. Chairman, to give you a direct answer to a very direct question, I would say, yes, the public has the right to know.

There are other rights the public has, and I think the issue here is how do we go about satisfying those rights?

You, I know, have expressed concern about contracts such as our Superfund Hotline, and do we make known to the public that those telephones are, in fact, manned by contractors?

Well, the primary right that the public has in that particular case is to know that they are getting accurate information, that they are getting it timely, and that it is information that the Environmental Protection Agency stands behind.

Now, how do we go about satisfying their right to know that it was a contractor is a more difficult question. Our concern in a situation like that is for a function that responds to some 15,000 calls a month, what does it do to our ability to provide those responses timely, if we have to take the time with each of those 15,000 calls a month, explain who the person is and what contractor they work for and answer any questions that the public may have when they get that information.

It is not that we don't want to give that information. Certainly, Mr. Chairman, if the powers that be told us that we should give that information, we would have no heartburn in giving it.

Now, our concern is what it does to our ability to be responsive.

Senator PRYOR. If a person wants to know the background of the individual who is giving his or her interpretation of the treatment of a particular hazardous chemical, does the public, or even the Congress, have the right to know the background of that individual?

Mr. O'CONNOR. Again, the public has the right to know if they ask.

I think the issue here is, do we want to take our valuable time on the hotline explaining those things, or do we instead want to rely on a system which is open to review? It is open to review by the Inspector General, by the General Accounting Office, to your staff to look at that and to see that it is operating properly and that the information going out is, in fact, the agency's information and that the contractor is, in fact, a conduit of that information.

And if those reviews are done, and if those reviews show that there is a problem with that system, then I certainly want to know about it.

Senator PRYOR. Now, Mr. O'Connor, does EPA have the manpower not to hire contractors in this situation? Can't you hire Federal employees to perform this function?

Mr. O'CONNOR. You could hire Federal employees, yes. It's a service that is available in the private sector. There is nothing inherently governmental about it, and we have chosen to access private industry to man those telephones and to provide that information to the public.

Senator PRYOR. But don't you invite the potential for a conflict of interest if these are private concerns interpreting or answering these questions about that potentially hazardous chemical?

Mr. O'CONNOR. No, sir, I don't think that we are.

First of all, we select the contractors. We provide them training on how they are to answer. About 80 percent of the calls that come in, the answers are just strict facts out of regulations or rules. The contractors are overseen on a regular basis by the agency. The calls and the responses, logs of those are kept, and they are reviewed by the agency periodically.

The rules for when we require our contractors to come to agency people when it is a matter of interpretation are fairly clear. I am not concerned that they are giving out responses that might be slanted toward their work outside the agency, no.

Senator PRYOR. Do you know when you hire these private contractors who else they represent?

Mr. O'CONNOR. No, sir. We don't know who else they represent specifically.

As I said at the beginning, though, we understand that in our business, our contractors do work in a regulated industry.

Senator PRYOR. How do you determine if there might or might not be a conflict of interest, if you don't know who else they work for?

Mr. O'CONNOR. I think in this case, Mr. Chairman, it is a matter of the agency aggressively managing the process, which we do, which is our way of assuring that the information going out is accurate, is factual, and is not slanted toward anyone's personal benefit.

Senator PRYOR. You don't seem to be very concerned at all about the potential of a conflict of interest. When you hire a contractor, do you ask them who else they represent?

Mr. O'CONNOR. Mr. Chairman, we are very concerned about conflict of interest, and since our last visit to you in February we have taken a number of very significant initiatives along some of your suggestions and along some of the suggestions that the GAO made. In our recent audit, they did a conflict of interest avoidance review at EPA. We recognize particularly in our Superfund program that there is a very high potential for conflict in that program.

We have taken a number of steps which I would be happy to talk about, if you would like to take the time to deal with it. It is certainly an issue that, given our responsibilities in the Superfund program is of the utmost concern to us.

Senator PRYOR. Well, for example, do you know how many EPA contractors work, not for OPEC, but with the Department of Energy on environmental issues?

Mr. O'CONNOR. No, I couldn't tell you how many.

Senator PRYOR. All right.

Does EPA know if the contractors that it is sending out today to review DOE facilities also work on those same sites for the Department of Energy? Are you concerned or aware of that relationship?

Mr. O'CONNOR. I don't know off the top of my head, Mr. Chairman.

But, as you are aware, in our Superfund program, where we have enormous potential for conflict on sites, as we are cleaning them up and as we are dealing with responsible parties and taking enforcement actions against responsible parties, if you look at our contracts, the contract provisions dealing with conflicts are very, very strong to prevent the involvement of our contractor with anyone else who may be a responsible party or have involvement at the particular site.

Senator PRYOR. Let's look at the DOE weapons plants. EPA has a role to play in monitoring the environmental effects of that particular weapons plant, so EPA goes out and hires a contractor to go to the DOE facility and monitor the environmental impact.

Now, you don't know if they also work for DOE, and you don't know if that contractor might also work for private firms which have possibly added to the pollution problem, do you?

Mr. O'CONNOR. Well, I don't think that's true. As I said, if you look at our contracts that provide those types of services, in addressing sites and cleaning up sites, we have especially tailored conflict of interest clauses that go beyond what is in the Federal Procurement Regulations, because the problem here is much greater than you normally would find.

That requires contractors to disclose, and we provide them lists of responsible parties, if they have any business connections with those firms who are responsible for the situation at the site.

Senator PRYOR. I think you've been listening to some of the testimony this morning from the Department of Energy and some of the questions that the Committee has posed, do you sense in the EPA that there is a shift from the Federal employee from the private contractor?

Do you sense this in making or establishing policy for the agency?

Mr. O'CONNOR. Not in establishing policy, Mr. Chairman. I am still confident that the agency does that. Clearly, our contracting-out budget has increased much more rapidly than our internal hires. There is no question about that.

Senator PRYOR. Now, we talked about the fact that DOE today has 4,000 fewer employees than they had in 1980. Do you have any figures on EPA Federal employees, say, today versus 1980?

Mr. O'CONNOR. I know that today we are somewhere around 15,000, which is larger than it was 10 years ago, certainly. I don't believe there has been a reduction in agency staffing during the decade.

Senator PRYOR. All right, now, do you know whether the number of private contractors used by EPA is growing and whether private consulting dollars are up or down?

Mr. O'CONNOR. Well, there is no question that the dollars are up, primarily as a result of the Superfund program, which came into being in 1981. I think in the decade of the 80's, our contracting budget probably tripled, as far as annual obligations.

Senator PRYOR. The contracting budget tripled in the 80's.

Do you know of instances in the Environmental Protection Agency where testimony before the Congress has been prepared by private contractors?

Mr. O'CONNOR. No, sir, I am not aware of any such situations.

Senator PRYOR. Do you know if private contractors have been involved in drafting legislation or amendments to bills coming through Congress?

Mr. O'CONNOR. I suspect—I don't suspect. They have played a role in that. I think that was discussed by Ms. Fitzpatrick earlier. It's a question of what role did the contractor play? What part did they play? Was it a gathering of information or were they the ones sitting at the table making the decision on what the agency's position is going to be on something.

And, clearly, it's the former and not the latter.

Senator PRYOR. Here's one example of what the contractor is saying in his resume. I understand this is the contractor who is involved with the hotline. Let me just read this.

This is for a Senior Information Specialist, RCRA Superfund Industrial Assistance Hotline. GEO Research Consultants, Inc. 1, "Interpreted RCRA and CERCLA statutory and regulatory requirements and associated policy and technical guidance for callers of diverse backgrounds in varying degrees of regulatory knowledge."

Now, wouldn't this be a true interpretation of laws, rules, and regulations that you said might not be such a good policy?

Mr. O'CONNOR. No, sir. On that contract, again, about 80 percent of the responses that go out are just a matter of stating facts, and there is a provision for the 20 percent that requires interpretating procedures for the contractor, explaining when the contractor is required to go to someone in the agency, if it required interpretation or decision-making.

And then that response is provided to the caller.

Senator PRYOR. Well, is this résumé correct then? Do they interpret the statutory and regulatory requirements or not? This is why you are paying them, based on their resume.

Mr. O'CONNOR. Interpretation is certainly a part of it, and, again, if it is a matter of true interpretation, they are required to go back to the agency. Interpretation is a very broad definition.

Senator PRYOR. Mr. O'Connor, do you know of situations where a private contractor is, let's say, sitting in the next cubicle to a Federal employee at EPA, and where the private contractor is paid more? And, if so, how much more?

Mr. O'CONNOR. Yes.

There is no question that if you go over to EPA Headquarters, you'll see contractor employees sitting in offices over there. And I suspect, although I don't know if they are paid, I suspect that they are paid more than their counterpart on the other side of the partition.

Senator PRYOR. How do you recognize a Federal employee from a private contractor, whether they are smiling? I assume the Federal employee is not very happy, because here's this person right next to them getting maybe twice the salary.

Mr. O'CONNOR. I recognize him——

Senator PRYOR. How do you separate the two or recognize them?

Mr. O'CONNOR. Well, I listen for a moment, and whoever is making the decision is the Federal employee and whoever is providing information is the contractor.

Senator PRYOR. Now, say that again. That's critical.

What?

Mr. O'CONNOR. I was just being facetious, Mr. Chairman.What I said was that the person making the decision was the Federal employee, and the individual who is searching or providing the data was the contractor.

We keep our contractors, for the most part, segregated from the Federal employees so that when you go into a space you know whether you are in Federal space or whether you are in a space that is occupied by contractors.

Senator PRYOR. Over at the Department of Energy, we found one very critical function of the Department, where I think there were 50 private contractors and consultants and I think there were about 13 Federal employees.

Is this the same as the EPA ratio in your offices?

What is the ratio of private contractor to Federal employee?

Mr. O'CONNOR. Mr. Chairman, I don't know what that ratio is, but if you would go into Headquarters, you would not see that type of a ratio in an office.

Senator PRYOR. Do we know what the ratio is at EPA throughout? Not just in one office or in the Headquarters?

Mr. O'CONNOR. No, I don't know here what the ratio is. If you are asking how many——

Senator PRYOR. Do you know anywhere?

Mr. O'CONNOR. How many EPA employees versus how many contractor employees?

Senator PRYOR. Yes.

Mr. O'CONNOR. We know the number of EPA employees, of course. The number of contractor employees is much more difficult to determine, and one of the reasons, Mr. Chairman, is that the predominant type of contractor, EPA, is not buying, let's say, 10 people whose names you can click off if you are sitting.

All right, you are buying a range of hours, and if the number of hours you use in 1 year on 1 contract amounts to 20 manyears, there may have been 75 or 80 people involved in that amount of time. So, it's very difficult.

Senator PRYOR. If you are purchasing a range of hours, Mr. O'Connor, have you done any studies on whether that purchase justifies going to the private sector versus using a Federal employee?

Mr. O'CONNOR. No. That type of analysis is done—it is primarily a function of—well, let me put it this way: If you have 10 people in a Federal office, you have 10 specific people, you buy an equivalent of 10 people in the private sector, that gains you access to any number of expertise—again, not 10 people whose names you can click off, but you use people of different expertises, different backgrounds, different qualifications or capabilities as the need dictates, so you are not tied in with 10 specific individuals.

And that is what is really the more important consideration rather than whether it costs us 20 percent or 30 percent more if we used contractor employees.

Senator PRYOR. How do you justify this? Has any study been done? Any analysis to arrive at that conclusion?

Mr. O'CONNOR. No formal analysis, Mr. Chairman, that I can point to.

Senator PRYOR. Well, Mr. O'Connor, once again, I don't want you to think that this Subcommittee is just picking on EPA. What we are trying to do is to take two agencies, that is the Department of Energy and EPA, and sort of put a microscope on them, and see how private contractors are justified, see what functions they perform, and how much we are paying for that service. Are they setting policy? Are we losing our Federal workforce to the private companies?

I want to thank you for coming again. I still think that we have a very long way to go. I think we just rely on contractors automatically. I think there is a mentality in the Federal government that pretty well just decides at the first of the year, that if someone walks in with a fairly good idea, and they make a presentation, the government will buy it.

I think also that there is a lot that the Federal workforce out there could still be doing. I realize that the morale in the workforce as compared to the private contractor is not what it should be, and I think that is understandable.

I was going to recommend when I asked the line of questions about how you know the private contractor from the Federal employee, that maybe we could use, let's say, blue armbands, or red armbands, to distinguish between the two. I hope we don't have to come to something like that, and I want to thank you, once again, for appearing here today.

Do you have any final comments for this Subcommittee?

Mr. O'CONNOR. I will leave you with perhaps a bit of good news. Maybe it is the news of the type you don't hear very often, but last spring the Administrator of EPA took a very serious look at the Superfund program and committed to taking a number of actions to strengthen that program. And, in looking at it and deciding on the pace he wanted to take with that program and the direction he wanted to take, he determined that he could only go in that direction by hiring an additional 500 EPA employees.

The type of work that these people are going to be doing is, in fact, inherently governmental—that is why we are hiring EPA employees rather than contractors. So, by getting more work done and getting it done better in that program, in this case, the response wasn't "Let's hire more contractor employees." He did, in fact, authorize the agency to go out and hire 500 additional FTE's, which I think you will find as good news.

Senator PRYOR. Well, that is good news.

Mr. O'CONNOR. As far as recommendations, in addition to what you have heard from the Department of Energy, it seems that we get tangled up a lot in talking about, in trying to arrive at what is the contractor really doing, and what is the EPA manager really doing on these projects, and I would be happy to take the time and spend it with your staff to come in and perhaps just walk through one of these, take one of these projects that you have held up in the air, and let's walk through it from start to finish, and see what the contractors are doing, see what the agency people are doing,

and see what the agency's manager who is responsible for that project is doing.

Perhaps that would make you feel——

Senator PRYOR. We would appreciate that opportunity, and I want to thank you for your cooperation with the Subcommittee staff. I know that they have visited with you and your people on several occasions in preparation for this rather lengthy report I am putting into the record. I think it is probably one of the greatest dissertations I have seen on two agencies where the use of private contractors versus the use of the Federal employee has been really been analyzed.

So, Mr. O'Connor, I thank you very much, and with that, we will adjourn the hearing.

Thank you very much.

Mr. O'CONNOR. Thank you, Mr. Chairman.

[Whereupon, at 11:35 a.m., the Subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

Statement of
Donna R. Fitzpatrick

Assistant Secretary, Management and Administration
U.S. Department of Energy

November 6, 1989

INTRODUCTION

I am pleased to have this opportunity to appear before you today to discuss the Department's use of support services contractors.

BACKGROUND

The Department of Energy (DOE) and its predecessor organizations, the Energy Research and Development Administration and the Atomic Energy Commission, have relied from the beginning on private sector contractors working under the guidance of agency personnel to perform energy research, weapons testing and production, and materials fabrication functions. The Atomic Energy Act of 1946, was especially crafted by the Congress to permit "management contracts for the operation of Government-owned plants so as to gain the full advantage of the skill and experience of American industry." The Department, in addition, has traditionally utilized private sector skills and capabilities to accomplish support and commercial tasks through the use of support contractors. This use has provided DOE with a valuable and needed augmentation of its Federal workforce. DOE remains concerned, however, about the improper use of support contractors.

Federal policy on performance of commercial activities was first promulgated by the Bureau of the Budget in 1955 and was emphasized with the reissuance of OMB Circular A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES, dated August 4, 1983, and issuance of Executive Order 12615, PERFORMANCE OF COMMERCIAL ACTIVITIES

dated November 19, 1987, both of which state that agencies should rely on the private sector for commercially available products and services. Additionally, OMB Circular A-120, GUIDELINES FOR USE OF ADVISORY AND ASSISTANCE SERVICES of January 4, 1988, speaks to the proper use of advisory and assistance services contracts (a subset of support services contracts) as a legitimate way of assisting agencies in performance of their missions.

DOE is committed to following these policies. In response, the Department is using contractors for performance of commercial activities ranging from mail services to assistance with programs operations and management support activities. The Department has utilized support services contracts to perform commercial type activities that no longer require Federal personnel for accomplishment. This also assists in accomplishing the goal of controlling employment growth in the Federal sector.

Due to the fluctuating needs and varying nature of DOE's requirements, it is often more efficient and cost-effective, over the life of a program, to use support services contractors to provide specific products and perform specific services for the Department rather than hire permanent Federal staff. In many instances, these contractors also are utilized because they provide the required technical expertise that is unavailable either within DOE or elsewhere within the Federal Government.

SUPPORT SERVICES CONTRACTOR CONTROLS

Ten years ago, DOE instituted a comprehensive system for management review and control of contractual support services. The development of Departmental controls most recently expressed in DOE Order 4200.3B, MANAGEMENT OF SUPPORT SERVICES CONTRACTS, of October 3, 1985, has provided clear and practical internal procedures and policies by which these contracts are to be managed.

Since then, the system has been revised to respond to newly identified issues, to make oversight more effective, and to reduce the risk of abuse.

Currently there are approximately 164 active support services contracts, and more than 1,600 active task assignments, at Headquarters. With this volume of activity, it is mandatory that management oversight and systems review resources be directed to issues of greatest risk, and to specific problems that are identified by the management process and through other means.

DOE OVERSIGHT POLICY AND PROCESS

The award and oversight of support service contracts is governed by regulations issued by the Office of Management and Budget and by the Office of Personnel Management. DOE also has issued guidance to provide assistance in determining methods to avoid problems in obtaining such services.

Specifically, this documentation includes:

- TITLE 48 CFR CHAPTER 1, FEDERAL ACQUISITION REGULATION (FAR), SUBPART 17.2.
- TITLE 48 CFR CHAPTER 9, DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR), SUBPART 917.6.
- OMB CIRCULAR A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES, which specifies in part that Government employees must perform those functions which are essential to retaining control over the conduct of Government programs.
- OMB CIRCULAR A-120, GUIDELINES FOR THE USE OF CONSULTING SERVICES, which provides policy guidance on the use of consulting support service contractors.
- Federal Personnel Manual Letters 300-8, of 12-12-67, and 300-12, of 8-20-68, which provide guidance concerning employer-employee relationships between Government and contractor personnel.
- DOE 4200.3B, MANAGEMENT OF SUPPORT SERVICES CONTRACT ACTIVITY, of 10-3-85, which was initiated with the purpose of providing the policy, procedures, and responsibilities for the management of support service contracts within the Department of Energy.
- DOE 4200.1C, COMPETITION IN CONTRACTING, of 1-9-87.

Each of these directives was developed, in part, to assure that contractors do not exercise discretionary authority or make value judgments which determine the development, execution, and evaluation of Government policies and programs.

NATURE OF CONTRACTUAL SUPPORT SERVICES

Support services contracts are utilized by DOE to provide a wide range of technical and administrative services, as well as provide advice and consultation. These services help Department managers and personnel develop and execute Department programs.

Contractors provide the following types of assistance:

- Independent reviews of Federal and private sector energy research and development programs;
- Services related to nuclear safety appraisals at DOE sites;
- Technical studies and other services related to DOE waste management activities;
- Services related to inspections and evaluations of safeguards and security effectiveness at DOE facilities;
- Preparation of environmental impact analyses;
- Computer facility operations, data entry, library, and word processing services;
- Management studies, including reviews of information and financial systems, and structural and managerial processes;
- Accounting and auditing, administrative support, physical security, janitorial, and grounds maintenance services; and,
- Routine correspondence preparation, information services, "hot lines," records management, and inventory management.

In order to (1) assure that all policy and programmatic decisions are made by Government officials; (2) control contractor activities; and (3) make certain that contractors keep within their task assignments, DOE requires its

own personnel to review the contractors' work at various stages.

SUPPORT SERVICES PRE-AWARD REVIEW OF REQUIREMENTS

DOE Order 4200.3B, which was first promulgated in 1978, sets forth the management policy and controls on the acquisition and use of support services contracts. Under this Order, DOE reviews individual requests made by program offices for support services and conducts its oversight of support services contracts.

DOE has taken several steps to assure that support services requests meet all Federal guidelines. The Department's pre-award process has been designed to prevent potential misuse in assigning government functions to contractors and to avoid potential supervision of Federal personnel by contractor employees. This review was also designed to prevent the kind of working relationship developing between a DOE program official and a contractor employee that may become more involved than a typical arms-length contractual relationship.

Part of DOE's management system for support services contracts is to avoid contractor involvement in issues relating to the establishment or alteration of Departmental policy, programs, or plans, or addressing issues for which there is no established policy.

The following are specific actions for which a support service contractor may not be used:

(1) Initiating or originating draft testimony or presenting, as a representative of the Government, testimony before a congressional committee or regulatory body;

(2) Editing transcripts of a congressional committee or regulatory body hearing or drafting, without attribution, inserts to transcripts;

(3) Speaking before public or private groups as a representative of the Government;

(4) Initiating or originating drafts of official documents and correspondence which are intended to represent the policies or plans of the Government;

(5) Contracting, on behalf of the Department, Members of Congress, congressional committees, staff members, or officials of State or foreign governments;

(6) Drafting official correspondence to State and local governments;

(7) Drafting official correspondence to congressional offices except to provide routing information requested in constituent mail; and

(8) Drafting official responses to correspondence requiring substantial technical research, where the response reflects a Departmental policy position.

POST-AWARD REVIEW PROCESS

A contract specifies required deliverables or work products. The Contracting Officer's Representative (COR), who is the program official, reviews these deliverables to determine whether they adhere to stated requirements. The contracting officer and the COR are required to make certain that the contractor has completed the tasks placed under the contract. At closeout of the contract, the contracting officer and the COR review all deliverables and work products to ensure completeness of the contract work effort.

Further, DOE has an ongoing procurement management assistance review program (PMAR) to ensure that DOE managers are effectively managing their individual support services contracts. Under the provisions of DOE Order 4210.3C, PROCUREMENT MANAGEMENT ASSISTANCE REVIEW PROGRAM, all Departmental Elements which have the authority to award contracts or financial assistance instruments are periodically reviewed. These reviews are primarily focused on compliance with agency and Federal procurement regulations, as well as the application of good business judgment. As a further level of oversight, the DOE Inspector General regularly reviews DOE's advisory and assistance services contracts for compliance with Federal and Departmental requirements.

ORGANIZATIONAL CONFLICT OF INTEREST

The Department of Energy has a rigorous process intended to identify and address organizational conflicts of interest on the part of its prospective contractors. The process was designed to meet the requirements of Public Law 95-39 and Public Law 95-70.

Organizational Conflicts of Interest (OCI) are addressed by the Department of Energy Acquisition Regulation 909.500 and in DOE Order 4220.4, ORGANIZATIONAL CONFLICT OF INTEREST PROCESSING PROCEDURES, which describes the process for review of materials and resolution of potential conflicts of interest. Proposers are requested to disclose any past, present, or possible future interests that may relate to work contemplated by the solicitation. These interests may be, among others: investments; related work for DOE or others; patents or other interests in the same or competing technologies; or ownership relationships with companies that have such interests, whether subsidiary, parent, or affiliate.

Action must be taken if a potential conflict of interest exists. Possible actions include: denial of contract award, mitigation of the conflict through special reviews of the contractor work product, deletion of portions from the statement of work that relate to a conflict, or other actions, as deemed appropriate. Should the Department determine that it is in the best interests of the United States to make the award to a particular firm, notwithstanding the potential for a conflict of interest, then that determination must be published in the Federal Register, citing the basis for the award.

DOE's OCI system is designed to be thorough and demanding. DOE personnel involved in the procurement process attempt to recognize inconsistencies and

contradictions in the materials submitted by proposers. Incomplete reviews could result in contract awards, however, in which potential conflicts of interest may exist. In addition, a change in a contractor's business operations could result in a conflict of interest. Under any circumstance, when a conflict of interest is identified, it must be disclosed to the contracting officer and steps taken to mitigate the conflict or to terminate the contract.

CONCLUSION

The management culture of the Department is changing significantly. The Secretary has established several high priority Departmental initiatives in the areas of environment, safety, health, security, waste management, and facility modernization. This places a greater need for DOE staff to provide effective oversight of contractor activities and highlights the Department's need to recruit trained and experienced scientific, technical and other professional personnel.

The Department is focusing its attention on increasing its ability to effectively oversee the work of its contractors. While we have identified some problems in these areas, we believe that the initiatives already undertaken by the President and the Secretary will assure that DOE does not become "captive" to the contractors and thus be unable to render independent judgments about program priorities and project planning and execution. DOE must ensure that the Department has adequate Federal employees that understand Departmental activities to effectively oversee DOE contractors, and exercise judgments about program priorities and project planning.

In this regard, several instances of non-compliance with the requirements I

have set forth today have come to my attention. I can assure you that the Department's concerns in these areas are consistent with the concerns of the Subcommittee and the Chairman. We appreciate your views and suggestions to assist us in effectively carrying out the Department's stewardship.

TESTIMONY OF
DAVID J. O'CONNOR, DIRECTOR
PROCUREMENT AND CONTRACTS MANAGEMENT DIVISION
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NOVEMBER 6, 1989

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE THE UNITED STATES SENATE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE ON THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S (EPA) USE OF SUPPORT SERVICE CONTRACTORS.

EPA RELIES HEAVILY ON CONTRACTOR SUPPORT TO ACHIEVE ITS MISSION. ALTHOUGH THESE CONTRACTORS MAKE RECOMMENDATIONS TO AGENCY PERSONNEL ON A WIDE RANGE OF ISSUES, THE AGENCY REALIZES THAT THESE ARE ONLY RECOMMENDATIONS. THE ULTIMATE FORMULATION OF POLICIES AND THE DIRECTION OF THE AGENCY REMAIN INTERNAL. THE CONTRACTORS REMAIN ACCOUNTABLE TO EPA.

FURTHERMORE, EPA PRIDES ITSELF IN BEING A VERY OPEN AGENCY. DUE TO ITS MISSION, EPA IS CONTINUALLY UNDER OBSERVATION AND THE AGENCY WELCOMES THIS HIGH LEVEL OF INTEREST. BY UNDERSTANDING THE CONCERNS OF OTHERS, IT CAN BETTER SERVE THE PUBLIC. ONE OF THE AREAS IN WHICH EPA INTERFACES HEAVILY WITH THE PUBLIC IS THROUGH THE RELEASE OF INFORMATION PREPARED BOTH BY AGENCY PERSONNEL AND BY SUPPORT CONTRACTORS. WITH A TRUE SPIRIT OF COOPERATION, EPA EMPLOYEES ARE ABLE TO PROVIDE MOST OF WHAT THE PUBLIC REQUESTS.

ALTHOUGH THE FREEDOM OF INFORMATION ACT (FOIA) ESTABLISHES STRICT GUIDELINES ON WHAT INFORMATION CAN BE RELEASED TO THE PUBLIC, EPA MAKES EVERY ATTEMPT TO BE RESPONSIVE TO THE PUBLIC'S REQUESTS. WHILE IT IS TRUE THAT EPA RELIES ON CONTRACTOR SUPPORT IN GENERATING MANY OF ITS DOCUMENTS, THE AGENCY RARELY ALLOWS THAT FACT TO ENTER INTO THE DECISION OF WHETHER OR NOT A DOCUMENT SHOULD BE RELEASABLE. THIS IS BECAUSE EPA ACCEPTS RESPONSIBILITY FOR THE CONTENT OF ALL ITS DOCUMENTS, REGARDLESS OF WHAT ENTITY DID THE ACTUAL WRITING.

IN THOSE CASES WHERE A DOCUMENT HAS BEEN CONTRACTOR-PRODUCED, THE AGENCY HAS BEEN HEAVILY INVOLVED IN ALL PHASES OF ITS FORMATION. THE FINAL DOCUMENT REPRESENTS EPA'S THOUGHTS, IDEAS, AND POSITIONS. USUALLY, THERE IS NOT A PROBLEM WITH RELEASING SUCH A DOCUMENT.

IN THE RARE CASES WHERE THERE IS A DIFFICULTY, THE AGENCY MAY RELEASE A REDACTED VERSION OF A DOCUMENT. THERE ARE THREE PRIMARY REASONS THAT NECESSITATE SUCH REDACTION. THE FIRST IS CONCERNED WITH PROTECTING THE INTEGRITY OF THE CONTRACTING PROCESS. BECAUSE THE MAJORITY OF THE CONTRACTS AREA INFORMATION REQUESTS ARE FROM COMPETITORS SEEKING INFORMATION ABOUT RIVAL FIRMS' PROPOSALS, FOIA HAS EXCLUDED CONFIDENTIAL BUSINESS INFORMATION FROM MANDATORY DISCLOSURE. THIS IS DONE TO ENSURE THAT THE COMPETITIVE POSITION OF CONTRACTORS IS NOT HARMED OR THAT A CONTRACTOR'S SPECIFIC PROPRIETARY COST AND TECHNICAL INFORMATION IS NOT REVEALED.

A SECOND REASON THAT A DOCUMENT MIGHT BE REDACTED IS BECAUSE IT IS PRE-DECISIONAL. EPA SOMETIMES RELIES ON CONTRACTORS TO DEVELOP OPTIONS ON HOW TO ADDRESS A SPECIFIC AGENCY ISSUE. ALTHOUGH EPA ULTIMATELY MAKES ITS OWN DECISION ON WHAT ITS FINAL POSITION WILL BE, MANY DIFFERENT POSITIONS MAY BE CONSIDERED PRIOR TO REACHING THAT FINAL DECISION. IN THESE SITUATIONS, COMPLETE RELEASABILITY MIGHT NOT OCCUR BECAUSE THE DOCUMENT DOES NOT REFLECT THE AGENCY'S OFFICIAL POSITION AND THUS COULD BE DETRIMENTAL TO EPA'S CREDIBILITY AND OPERATIONS.

FINALLY, SOME INFORMATION MAY BE CONTRACTOR-PRODUCED IN PREPARATION FOR ENFORCEMENT PROCEEDINGS. THE PREMATURE RELEASE OF SUCH INFORMATION COULD PROVE DAMAGING TO THE AGENCY'S ABILITY TO EFFECTIVELY CARRY OUT ITS MISSIONS.

I WANT TO STRESS, HOWEVER, THAT BECAUSE FEDERAL CONTRACTING ITSELF RESTS ON CONSTANTLY CHANGING LAWS AND PRACTICES, EPA'S BROAD POSITIONS CONCERNING RELEASABILITY ARE LIKEWISE SUBJECT TO CHANGE. THE LINE BETWEEN DISCLOSURE AND THE NEED FOR CONFIDENTIALITY IS NEVER FIXED VERY FIRMLY AND DEPENDS LARGELY ON THE SPECIFICS OF THE INDIVIDUAL REQUEST FOR INFORMATION.

I HAVE SUBMITTED OUR ANSWERS TO THE QUESTIONS IN YOUR OCTOBER 18, 1989 LETTER FOR THE RECORD. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE REGARDING THE ENVIRONMENTAL PROTECTION AGENCY'S USE OF SUPPORT SERVICE CONTRACTORS.

EPA RESPONSES TO THE QUESTIONS IN
SENATOR PRYOR'S OCTOBER 18, 1989 LETTER

1. QUESTION: Can EPA tell the public how many contractor employees assist EPA in activities such as rulemaking, enforcement, preparation of Congressional reports, communications with the public? In addition, can EPA provide the relative number of "official employees" (on a FTE basis) and contractor employees that work for each box of EPA's organization chart?

ANSWER: EPA does not track the information requested. The Agency has the ability to compile it, but it would require a substantial amount of time and effort to do so. The activities in question may be performed under any of several hundred contracts. Each contract would include hundreds, if not thousands, of individual work assignments. EPA would need to review each of those work assignments to compile the information.

2. QUESTION: Where EPA employs a contractor to interact with the public or to assist in the preparation of public documents (e.g., rules, reports to Congress, Congressional testimony, correspondence with the public), is it EPA's practice to routinely disclose the use of a contractor in the work? For example, where a Federal Register Notice provides a telephone number to contact for further information about a rule, does EPA routinely disclose that the number is that of a contractor (in instances where this is the case)? For example, where a contractor is employed to draft an official response to a permit application, does the official notice of action on the application identify the use of a contractor? For example, when a contractor is employed to review public comments on a proposed rule, are those who transmit the comments routinely informed of the role of the contractor?

ANSWER: EPA continues to be very open about its use of contractors and publishes key information regarding contract awards in the Commerce Business Daily. A description of the work to be performed under the contract, the awardee name and address, and the dollar amount of the contract are always listed. Congressional notification is also provided for all contract awards over $3,000,000. For reasons of practicality, such notification is not published for each of the hundreds of work assignments issued under a given contract. However, EPA does not hide contractor involvement and, if questioned on a particular assignment, readily acknowledges a firm's participation.

In regards to the specific examples listed in the question, those contractors are used either as conduits of information for EPA, in a recommendation-making capacity, or to compile,

summarize, and coordinate material. The contractors are not making inherently Governmental decisions or interpreting or determining EPA policy. EPA takes full ownership of those responsibilities. Because of the nature of the work, other than in the ways already discussed, EPA does not believe it is routinely necessary to make further announcements of contractor participation. Again, EPA does not hide the fact, and if asked, has been and continues to be very open about the nature and extent of contractor involvement.

3. **QUESTION: Will EPA disclose, upon public request, the names of contractor employees who assist in, e.g., the preparation of rules, enforcement activities, or in EPA communication with the public? Will it provide background information (e.g., resume type information)? If it will not provide general background information, will it provide background information on prior work for the Government?**

ANSWER: The identity of contractor employees who perform services for EPA and background information on these employees may be disclosed to the public only if this is not considered to be business confidential information protected from disclosure by the Freedom of Information Act (FOIA). Generally, if the identity of such a contractor employee is already a matter of public knowledge, it would not be considered confidential business information.

Resume type information, likewise, is releasable if the Agency determines it is not business confidential. Whether or not the employee is considered key personnel and the contractor's own opinion on the release are factors that go into making this determination. The decision process is the same whether the prior work was for the public or private sector.

It should be noted that the Agency places great importance on evaluating the qualifications of proposed contractor personnel. The qualifications of all key individuals proposed to perform under contract with EPA are carefully examined as a part of the source selection process. Similar reviews are performed when specific work assignments are issued to the contractor. This ensures that neither the contractor nor any of its proposed staff have a conflict of interest that would prevent them from objectively performing the assignment.

EPA recognizes that there are potential conflicts of interest inherent in doing business with any contractor or contractor employee that has or could perform work for the regulated community. As a way to mitigate this, many of our contracts contain tailored language requiring contractors to gain

our approval to participate in certain outside activities that could result in a conflict of interest. If a contractor fails to get the Agency's approval or performs work in defiance of Agency opposition, their contracts with EPA may be terminated. EPA also, as you know, places certain restrictions on contractor employees involved in sensitive work for the Agency. Most notable of these is the requirement that they sign a confidentiality agreement which prohibits their sharing with any outside parties information obtained during the course of their work for EPA.

4. QUESTION: To the extent that EPA employs a contractor who, to EPA's knowledge, also works for entities regulated by EPA, is it EPA's practice to disclose this fact to the public? If "yes", what information is routinely disclosed? If there is no routine disclosure, will EPA disclose such information upon public request?

ANSWER: Many of EPA's contractors also work for entities that are regulated by EPA. As noted earlier, we routinely synopsize the award of new contracts in the Commerce Business Daily. The synopsis notice does not contain any information regarding the contractor's private clients. A release of this information may occur only with the permission of the contractor.

While contractors provide EPA with aspects of their past history prior to award so that the Agency can assess the firms' capabilities, it is generally true that EPA only sees a record of that work which will strengthen a firm's chances of getting the contract. Because of the potentially large volume of a firm's past work, it is not practical for EPA to review all of it. Instead, at the pre-award stage, the Agency relies on firms' written assertions that previous work performed does not place them in a conflict of interest situation. A false statement in this area may be grounds for termination.

Because EPA is critically concerned about its contractors' outside work, the Agency is in the process of implementing several key initiatives. As part of their proposal packages, contractors will be asked to submit company conflict of interest avoidance procedures. These will be reviewed and evaluated by EPA in the process of making contractor responsibility determinations. EPA is also initiating on-site reviews of these conflict of interest procedures once a contract has been awarded. These reviews will entail, among other things, a survey of the contractors' clients and an examination of the nature of any significant work that may pose the potential for a conflict of interest.

5. **QUESTION: Can EPA tell the public what percentage of its support contractors also offer their services to interests that are regulated by EPA?**

ANSWER: Most of the companies the Agency contracts with also are involved heavily with private industry. Some companies will have ties to industries regulated by EPA. EPA has to deal realistically with the marketplace of services that are available to it. The Agency does not per se exclude contractors with ties to regulated industries. Exclusion of a contractor would be on a case-by-case basis, depending on the work EPA wanted to accomplish, and the nature and extent of a contractor's relationship with a regulated industry.

EPA has excluded contractors from bidding on work that would inherently create a conflict of interest. Contractors performing response action work in Superfund are prohibited from proposing on any Superfund advisory and assistant services contracts.

6. **QUESTION: In cases where contractors are used to support work such as rulemaking, enforcement, preparation of Congressional reports, etc., has EPA studied the comparative costs of employing official and contractor employees for such work?**

ANSWER: The decision on whether to use contractor support or in-house personnel to perform work is an overall management decision based on the availability of human and dollar resources. It is not merely a matter of cost comparison but, rather, a practical analysis involving the most efficient, expedient, and cost-effective manner of completing a task. Contractor involvement has its advantages in that, generally, a wider variety of expertise can be tapped than that of a limited number of in-house personnel. Often, this is a key factor in deciding to get contractor support. However, EPA is extremely careful in deciding in which areas it will acquire this support and will not contract for anything that is an inherently governmental function.

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ANSWER: The Agency does not receive many requests for copies of work plans. Although, in the past, the few work plans requested were not released, there were specific reasons supporting those decisions. Those requests that do come in are handled on a case-by-case basis.

Work plans describe how a contractor intends to carry out an assignment; in many cases, they contain privileged cost information. In considering whether or not to release a work plan, EPA has to examine its specific content considering whether it is

simply a restatement of the work assignment, which is releasable, or whether it contains significant proprietary technical or cost information. Executive Order 12,600 also requires us to provide the contractor an opportunity either to prevent release through judicial intervention or to explain why the information is not releasable.

8. **QUESTION: Are documents submitted by contractors to EPA which summarize or depict the work done by the contractor on an EPA contract available to the public upon request?**

ANSWER: In the case of progress reports and other work products resulting from the contracts, the documents are generally releasable, but only after a case-by-case review by technical personnel in program offices. The program officer must consider many factors including the competitive harm which might result from release of technical information to competitors, harm that would result from the release of documents before final Agency decisions are made, and the harm that would occur in enforcement proceedings from the premature release of information. Again, FOIA requires EPA to interface with the contractor prior to release.

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ANSWER: The potential for a conflict of interest is present in all contracts that involve the activities with which the Subcommittee is concerned. Except for publicizing award of a contract in the Commerce Business Daily, the Agency does not provide any additional notice.

If any actual conflict of interest arises, EPA documents any determination to mitigate the conflict and to proceed with a contract. That information is available to the public upon request.

10. **QUESTION: Are the wages and benefits of contractor employees publicly available on the same terms to which such information is available regarding civil servants who perform similar work?**

ANSWER: The salaries of government employees are generally releasable but individual benefit packages are generally not available to the public. In the case of contractor personnel working under EPA contracts, loaded wage rates (i.e., those where cost elements are undifferentiated) for individual labor categories are generally releasable provided unreleasable information cannot

be inferred from them. The salaries and benefits of individual contractor employees, however, are not releasable.

11. **QUESTION: Is information or documents prepared under contract available to the public on the same basis as if that information were prepared by a civil servant? If not, explain any differences.**

ANSWER: EPA assumes the responsibility for the content of its documents whether they are prepared in-house or by a contractor. If the latter prepares a document, EPA is involved through the entire development process to the extent that the final document fully represents EPA's thoughts, ideas, or position. Rarely does EPA draw a line of distinction in making any document available to the public. An occasional exception is if release of a contractor-prepared document would expose a firm's own proprietary process, would somehow adversely affect the competitive nature of a firm, or would fall within a specific FOIA exemption. These occurrences are few and generally result in an issuance delay (but ultimately an issuance) or the issuance of a redacted version of the document. EPA makes every effort to provide the public with as much information as possible.

12. **QUESTION: To the extent it is not EPA's current practice or policy to make information described above publicly available, does EPA believe that the public has a right to know which may indicate the need for a reconsideration of current practice or policy?**

ANSWER: As previously discussed, it is EPA's policy to remain consistently open in its dealings with Congress and the public. Only pertaining to the unusual situations cited earlier is there ever a problem with the release of documents. EPA works to be highly responsive and demonstrates caution only when the integrity of the contracting process might be affected or enforcement or other internal proceedings jeopardized.

EPA believes that its current practices and policies are excellent. Releasability is examined on a case-by-case basis. In many areas, EPA has even streamlined the release of information. For example, within the Superfund program, even though all contract awards have been nationally publicized, due to repeated outside inquiries the Agency maintains a current Superfund Contract List. This contains pertinent contract data that is available to the public through a simple phone call.

EPA takes very seriously its responsibilities to the American taxpayer. It takes enormous care in deciding what it will contract for and in making certain that the public is aware of its actions. Finally, EPA assumes ultimate responsibility for all of its products whether produced in-house or through contractor support.

EPA RESPONSES TO THE QUESTIONS IN
SENATOR PRYOR'S OCTOBER 18, 1989 LETTER

1. QUESTION: Can EPA tell the public how many contractor employees assist EPA in activities such as rulemaking, enforcement, preparation of Congressional reports, communications with the public? In addition, can EPA provide the relative number of "official employees" (on a FTE basis) and contractor employees that work for each box of EPA's organization chart?

ANSWER: EPA does not track the information requested. The Agency has the ability to compile it, but it would require a substantial amount of time and effort to do so. The activities in question may be performed under any of several hundred contracts. Each contract would include hundreds, if not thousands, of individual work assignments. EPA would need to review each of those work assignments to compile the information.

2. QUESTION: Where EPA employs a contractor to interact with the public or to assist in the preparation of public documents (e.g., rules, reports to Congress, Congressional testimony, correspondence with the public), is it EPA's practice to routinely disclose the use of a contractor in the work? For example, where a Federal Register Notice provides a telephone number to contact for further information about a rule, does EPA routinely disclose that the number is that of a contractor (in instances where this is the case)? For example, where a contractor is employed to draft an official response to a permit application, does the official notice of action on the application identify the use of a contractor? For example, when a contractor is employed to review public comments on a proposed rule, are those who transmit the comments routinely informed of the role of the contractor?

ANSWER: EPA continues to be very open about its use of contractors and publishes key information regarding contract awards in the Commerce Business Daily. A description of the work to be performed under the contract, the awardee name and address, and the dollar amount of the contract are always listed. Congressional notification is also provided for all contract awards over $3,000,000. For reasons of practicality, such notification is not published for each of the hundreds of work assignments issued under a given contract. However, EPA does not hide contractor involvement and, if questioned on a particular assignment, readily acknowledges a firm's participation.

In regards to the specific examples listed in the question, those contractors are used either as conduits of information for EPA, in a recommendation-making capacity, or to compile,

summarize, and coordinate material. The contractors are not making inherently Governmental decisions or interpreting or determining EPA policy. EPA takes full ownership of those responsibilities. Because of the nature of the work, other than in the ways already discussed, EPA does not believe it is routinely necessary to make further announcements of contractor participation. Again, EPA does not hide the fact, and if asked, has been and continues to be very open about the nature and extent of contractor involvement.

3. QUESTION: Will EPA disclose, upon public request, the names of contractor employees who assist in, e.g., the preparation of rules, enforcement activities, or in EPA communication with the public? Will it provide background information (e.g., resume type information)? If it will not provide general background information, will it provide background information on prior work for the Government?

ANSWER: The identity of contractor employees who perform services for EPA and background information on these employees may be disclosed to the public only if this is not considered to be business confidential information protected from disclosure by the Freedom of Information Act (FOIA). Generally, if the identity of such a contractor employee is already a matter of public knowledge, it would not be considered confidential business information.

Resume type information, likewise, is releasable if the Agency determines it is not business confidential. Whether or not the employee is considered key personnel and the contractor's own opinion on the release are factors that go into making this determination. The decision process is the same whether the prior work was for the public or private sector.

It should be noted that the Agency places great importance on evaluating the qualifications of proposed contractor personnel. The qualifications of all key individuals proposed to perform under contract with EPA are carefully examined as a part of the source selection process. Similar reviews are performed when specific work assignments are issued to the contractor. This ensures that neither the contractor nor any of its proposed staff have a conflict of interest that would prevent them from objectively performing the assignment.

EPA recognizes that there are potential conflicts of interest inherent in doing business with any contractor or contractor employee that has or could perform work for the regulated community. As a way to mitigate this, many of our contracts contain tailored language requiring contractors to gain

our approval to participate in certain outside activities that could result in a conflict of interest. If a contractor fails to get the Agency's approval or performs work in defiance of Agency opposition, their contracts with EPA may be terminated. EPA also, as you know, places certain restrictions on contractor employees involved in sensitive work for the Agency. Most notable of these is the requirement that they sign a confidentiality agreement which prohibits their sharing with any outside parties information obtained during the course of their work for EPA.

4. QUESTION: To the extent that EPA employs a contractor who, to EPA's knowledge, also works for entities regulated by EPA, is it EPA's practice to disclose this fact to the public? If "yes", what information is routinely disclosed? If there is no routine disclosure, will EPA disclose such information upon public request?

ANSWER: Many of EPA's contractors also work for entities that are regulated by EPA. As noted earlier, we routinely synopsize the award of new contracts in the Commerce Business Daily. The synopsis notice does not contain any information regarding the contractor's private clients. A release of this information may occur only with the permission of the contractor.

While contractors provide EPA with aspects of their past history prior to award so that the Agency can assess the firms' capabilities, it is generally true that EPA only sees a record of that work which will strengthen a firm's chances of getting the contract. Because of the potentially large volume of a firm's past work, it is not practical for EPA to review all of it. Instead, at the pre-award stage, the Agency relies on firms' written assertions that previous work performed does not place them in a conflict of interest situation. A false statement in this area may be grounds for termination.

Because EPA is critically concerned about its contractors' outside work, the Agency is in the process of implementing several key initiatives. As part of their proposal packages, contractors will be asked to submit company conflict of interest avoidance procedures. These will be reviewed and evaluated by EPA in the process of making contractor responsibility determinations. EPA is also initiating on-site reviews of these conflict of interest procedures once a contract has been awarded. These reviews will entail, among other things, a survey of the contractors' clients and an examination of the nature of any significant work that may pose the potential for a conflict of interest.

5. **QUESTION: Can EPA tell the public what percentage of its support contractors also offer their services to interests that are regulated by EPA?**

ANSWER: Most of the companies the Agency contracts with also are involved heavily with private industry. Some companies will have ties to industries regulated by EPA. EPA has to deal realistically with the marketplace of services that are available to it. The Agency does not per se exclude contractors with ties to regulated industries. Exclusion of a contractor would be on a case-by-case basis, depending on the work EPA wanted to accomplish, and the nature and extent of a contractor's relationship with a regulated industry.

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REPORT TO THE CHAIRMAN OF THE FEDERAL SERVICES SUBCOMMITTEE BY THE MAJORITY STAFF

THE DEPARTMENT OF ENERGY'S RELIANCE ON PRIVATE CONTRACTORS TO PERFORM THE WORK OF GOVERNMENT

This June, Secretary of Energy James Watkins told the country that the Department he inherited lacked officials with the skills needed to run our nuclear weapons complex. He told the public that he was being given unreliable information on this most critical and costly public management problem.[1]

Concurrent with the Secretary's stark admission, Senator David Pryor, Chairman of the Subcommittee on Federal Services, directed the subcommittee staff to examine the Department of Energy (DOE) Headquarters workforce that is responsible for addressing some of the nations's most pressing and costly public management problems.

In 1980, the subcommittee examined the performance of the Department's basic planning, policy-making, and management work. A staff report stated that the role of private contractors was so pervasive that it appeared that the private workforce was "by default...becoming the intelligence of government."[2] In 1980, DOE had 20,000 full-time permanent civil servants

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1 "Energy Chief Says Top Aides Lack Skills To Run U.S. Bomb Complex," New York Times, June 28, 1989, page 1.

2 See, "The Department of Energy's Use of Consultants and Contractors," in "Oversight of the Structure and Management of the Department of Energy," Staff Report, Committee on Governmental Affairs, United States Senate, 96th Congress, 2d Session, December 1980.

("officials"); on September 30, 1989, it had 16,005. Today, as in 1980, DOE does not know how many individuals are employed under its contracts and grants, but agrees that the number is well over 100,000.[3]

DOE procurement and management officials told staff they have refined procedures designed to address problems identified in 1980, which are addressed again here. They proudly state that DOE is a leader among civilian agencies in the sophistication and quality of its contract management. This report does not take issue with these characterizations.

The problems identified in this report, in staff's view, cannot simply be solved by the assurance that "we'll do better next time," or the assertion that "better management is necessary." DOE officials referred to or quoted in this report, to staff's knowledge, are hardworking, dedicated government employees.[4] The ability of these capable officials to manage the work of government is increasingly limited by an on-going, but

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[3] The lion's share of the $13.8 billion DOE budget is spent on grants and contracts. Thus, a basic DOE management task is the management of contractors. The largest contract recipients are the entities (nonprofit and profit-making corporations) that operate the nuclear weapons facilities and laboratories such as those at Oak Ridge and Brookhaven. The focus of this inquiry is not the wisdom of these arrangements, a question now being addressed by many others, but the ability of DOE Headquarters to understand and control the programs and policies for which it is responsible.

[4] The "support service contracts" discussed in this report are only a fraction of the contracts administered by the DOE Headquarters procurement office. DOE procurement officials are also responsible for thousands of contract actions relating to computer equipment and services, janitorial services, engineering and construction work, office furniture and supplies, janitorial services, technical equipment, and other items.

largely invisible and unexamined, change in the premises under which officials must manage. These assumptions shape the new rules that govern the composition of the government's basic work force. It is the purpose of this report to examine these assumptions and their operation, so that the public and official government managers may begin realistic discussions about the root causes of the widely perceived problems of our government.

SUMMARY

DOE relies on a private workforce to perform virtually all basic governmental functions. It relies on contractors in the preparation of its most important plans and policies, the development of budgets and budget documents, and the drafting of reports to Congress and Congressional testimony. It relies on contractors to monitor arms control negotiations, help prepare decisions on the export of nuclear technology, and conduct hearings and initial appeals in challenges to security clearance disputes. In addition, a contractor workforce is relied on by the Inspector General.[5]

DOE top management does not have the basic information it needs to understand the dimensions of its reliance on a contractor workforce. Available data indicates that the private workforce may approach or even exceed the number of federal employees in offices responsible for highly sensitive activities. Therefore,

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5 The Office of General Counsel does not routinely rely on a contract workforce. However, other elements of DOE purchase legal services under contract.

management is unable to integrate the contractor personnel into its view of DOE's workforce as a whole.

Reliance on contractors is driven by "ceilings" on the official workforce, with little regard for the legal or policy implications of this reliance, or even the relative manpower costs involved. DOE is relying largely on contractors to staff the environmental components of the "Tiger Teams" recently commissioned by Secretary Watkins to investigate nuclear facilities. This use of contractors has moved forward even though the Department long ago acknowledged the potential conflict of interest in the use of this workforce and the Inspector General has recently questioned the adequacy and reliability of the work on environmental oversight to date.

In theory, the use of contractors to perform the government's basic work is to be limited to "temporary" or "intermittent" needs. In practice, DOE relies on contractors as part of its permanent workforce. Many present contractors have been employed by DOE for over a decade. As federal officials come and go, often to leave for more rewarding work in contractor organizations, DOE's official memory is fast becoming, and may already be, a corporate memory.

The pervasive role of contractors is largely invisible to DOE officials, as well as to the public at large. Congressional testimony, DOE long-range plans, budget documents, internal directives, and memos drafted by contractors are transmitted within DOE as if prepared by DOE officials themselves.

Contractors tell DOE in their proposals and monthly reports to DOE that they are "preparing" its Congressional testimony and authoring official plans and reports to Congress. In response to requests for contractor work products, staff received DOE's most basic official documents. Where contractor employees work daily in DOE offices beside DOE employees, and where the only official evidence of their work product is the DOE document, detective work may be inadequate to determine the contractors precise role.[6]

By law, DOE procurement officials are responsible for assuring the integrity of DOE's contracting process. However, once the contract award is made, procurement officials often have little knowledge of the work being performed under the contract. The procurement office is aware that DOE rules, for example, prohibit the use of contractors to prepare Congressional testimony. However, the procurement office has repeatedly authorized payments without regard to monthly reports in which several contractors state they "prepared" Congressional testimony for Secretary Watkins or other DOE officials. When one contractor itself publicly advertised the need for assistance in "testimony preparation and review," the procurement office immediately asked the program office to review the work actually being done. That office provided written assurance that "we are confident that no [contractor] efforts involve the preparation of congressional

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6 If DOE's version of the contractor role is believed, DOE pays contractors well over $100,000 per person a year for tasks that officials describe as "coordination," "locating documents," and "xeroxing."

testimony...we are in agreement with you that [the contractor] is not authorized to perform these services under its DOE contract." It required subcommittee staff inquiry to determine that, notwithstanding contract terms and formal proclamations to the contrary, contractors are indeed, involved in the "preparation" of the Congressional testimony of DOE officials.

When individuals work for the government, questions regarding other interests they may possess become more than academic. DOE officials must routinely file financial disclosure forms which include disclosure of any interests in energy concerns. These forms are available for public inspection.[7] The rules that apply to government officials do not apply to contractors or their employees, even when they work on the same tasks as federal employees.

DOE program officials are aware that the contractors it relies upon also offer their services to private energy concerns, companies with interests in DOE's nuclear weapons complex, or foreign clients with interests in DOE's international energy policymaking. Unlike most other federal agencies, DOE routinely requires contractors to disclose "relevant" interests, so that officials may review them, and provide the public with notice when a contractor is employed notwithstanding its potential for conflict.

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[7] See Volume 10 of the Code of Federal Regulations, Part 1010.

But procurement officials, who have legal responsibility for the contracts, admit that they are often unaware of the significance of the information disclosed by the contractor. The procurement officials are also unaware of the work actually performed under the contract and say they rely heavily on program officials to alert them to the significance of the information that is disclosed. Meanwhile, the program officials, who depend on contractors to get their work done, assume that procurement officials will adequately apply DOE conflict rules.

The public and the press might keep DOE's management on its toes, but they are largely unaware that anyone but government officials are performing this work. Should they seek information on the identity and background of the contractor workforce, the information may be withheld under the Freedom of Information Act, as a business secret.

In sum, there is a need to examine the nature of DOE's reliance on this private workforce and to ask whether DOE officials can control and manage its contractor workforce, which is performing the work of government.

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STAFF'S METHOD

Staff examined procurement office files for about 125 contracts administered by the DOE Headquarters procurement office. The contracts examined by staff support virtually all components of DOE Headquarters, except the Federal Energy Regulatory Commission and the Energy Information Administration. Following examination of the files, staff requested the contractor work product for a number of contracts.

Staff met repeatedly with procurement officials to discuss policy and procedure, and staff findings regarding particular contracts. Staff met with "program" officials from the offices of Defense Programs, International Affairs, Fossil Energy, Environmental Safety and Health, the Special Assistant to the Secretary, and the Inspector General. Staff also met with attorneys in the Office of General Counsel and management officials who work for the Assistant Secretary for Administration. Phone inquiries were made of officials in other offices. Staff also met with, or conducted phone discussions with, officials in other organizations, including the Office of Technology Assessment, the General Accounting Office, and the National Academy of Sciences.

Staff wishes to particularly note the cooperation of DOE Headquarters procurement officials.

SECTION I

DOE'S DEPENDENCE ON A CONTRACTOR WORKFORCE

Government must be able to employ private experts, as needed, on a "temporary or intermittent" basis. These arrangements are not the subject of this report. This report reviews contracts under which DOE purchases a workforce to "support" its basic work, as needed. The contract typically provides that DOE may purchase up to a given number of manhours per year. Depending on the contract, this may provide ten, twenty, or more full-time contractor employees. The terms of these arrangements have continually lengthened; five years is increasingly the norm. Many DOE contractors and contractor employees have now been working for DOE for a decade or more.

A. Contract terms are broadly written

A contract's "statement of work" contains the legal description of the services which the government seeks to procure. The statements of work in DOE support service contracts often read like loud cries of "Help!" In many cases, the statements of work amount to descriptions of the mission of the government office to be "supported," and the declaration that the contractor will be available to "assist" in these activites as needs arise.

For example, the statement of work for a contract to support the Assistant Secretary for Defense Programs (ASDP) explains that the ASDP "has responsibility for overall policy, planning and management of defense program components." The statement then explains that the contractor may be called on to assist in

"strategic planning and analysis," "program planning and analysis," "policy assessment and analysis," "technical assessment and analysis," and "personnel management analysis and management support services." These broad categories are illustrated by a laundry list of possible tasks, which is not all inclusive. The work actually done under this "statement of work" is examined later, at Section II A.

DOE offices may rely on multiple support contracts. One contract may provide across-the-board "planning and management" support, a second may provide specialized "technical" support, and a third may provide "administrative" support. Each support contractor, in turn, may call on cadres of subcontractors and individual consultants. In essence, the government is buying a workforce; where the support contractor does not have the manpower needed, it serves as an employment agency. The DOE office itself may directly employ other contractors and individual consultants for more discrete assignments.

Once the contract begins, specific work assignments take the form of "task orders." Task orders may number in the dozens. A description of the task orders under a single contract suggests the breadth of assistance the government requires.

For example, the following are some of approximately 30 tasks from a contract to support the Assistant Secretary for Fossil Energy:

- Petroleum Reserves Budget Support;
- Alaskan Natural Gas Transportation System;

- Systems Development and Maintenance;
- Fossil Energy Communications Staff Support;
- Management and Financial Analysis;
- Acquisition Support;
- Administrative Support; and
- Budget Formulation.

B. It appears virtually all DOE official documents embody the work product of contractors

It is hard to capture the variety and volume of "official" work that results from contractor efforts, often without disclosure. The point is best illustrated by the summaries submitted by contractors themselves, in status reports and proposals for new work. The samples attached as Appendix A illustrate only a few tasks under a handful of contracts.

Staff requests for work product produced, among other things:

- The Secretary's Annual Report to Congress;
- The President's Report on the Nuclear Weapons Complex;
- DOE Congressional testimony;
- Budget Presentations to the Congress and the Office of Management and Budget;
- Reviews required to demonstrate conformance with the Federal Managers' Financial Integrity Act;
- Speeches, talking points, slides, and other material to be used by DOE officials in presentations;
- Reports used by DOE for internal control, such as Foreign Travel Reports, Manpower Summary Reports, Full Time Employee

Usage Reports, Personnel Status Reports, Capital Construction and Equipment Reports, Quarterly Conference Reports, Initiation/Obligation Reports, Contract Closeout Reports;

- Minutes of internal DOE meetings, summaries of conferences and congressional hearings;
- Briefing and hearing books for use by DOE officials in Congressional appearances and international treaty work; and
- Analyses and advice on potential legislation, DOE plans and internal orders, international negotiations, and management of civil service personnel.

Many of the above documents contain no disclosure of any contractor role.[8] Cover pages of examples are attached as Appendix B.

Of course, federal employees retain responsibility to review and approve official documents. The documents may be the result of "iterative" drafts and re-drafts, which involve both official and contractor staff. However, in many cases the only remnant of this process is the official document itself. There is no "paper trail" that permits a distinction to be made between official and

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8 Moreoever, some DOE documents are prefaced by copious thanks to numerous officials, with no suggestion that contractors were involved. The offices of the Assistant Secretary for Conservation and Renewable Resources have relied on support contractors to prepare annual and multi-year plans. The FY 1988 Energy Conservation Multi-Year Plan, acknowledges 13 DOE officials, 6 DOE laboratories, "literally hundreds of scientific, engineering, and public interest inputs" but not the DOE support contractor employed to "assist" in the plan. Meanwhile, contractor employees, for their part, list official documents in their resumes as their own publications, in order to receive further work from DOE.

contractor contributions. As the private workforce becomes increasingly integrated into the daily flow of paperwork, it becomes ever more difficult to determine just what it is that officials and contractors do.

C. Contractor-Official Ratio

As discussed below, DOE top management lacks centralized information on the dimensions of its private workforce. With the help of officials throughout DOE, staff sought to determine the relative size of the contractor and government workforce at DOE Headquarters. It appears that contractor employees comprise a very substantial part of the workforce and may equal or exceed the number of federal employees involved in the performance of governmental tasks. For example:

- DOE's most pressing task is the cleanup and safe operation of the nuclear weapons facilities. In September, 1989, the "official" staff in the Office of Environmental Audit numbered 13; the contractor staff numbered about 50;
- The Office of Safeguards and Security is in charge of ensuring adequate protection for nuclear weapons, classified information, and nuclear materials. In a September, 1989, visit staff was told that the Office's Division of Plans and Policy then employed twelve official and thirteen contractor employees;
- The "Tiger Teams" commissioned by Secretary Watkins to investigate and report on the nuclear facilities draw heavily

on a contractor workforce, and environmental subteams are staffed primarily by contractor employees;

- The responsibility for coordinating and preparing Congressional testimony and legislative analysis for DOE Defense Programs has been staffed primarily by 3 or 4 contract employees and, depending on other workload, 2 or 3 civil servants; and
- Limits on the federal employees available to staff DOE's security programs are so severe that, in an act of administrative triage, contractor employees serve as administrative hearing officers in challenges to security clearances.

D. Contractor support is forced by personnel ceilings

DOE Order 4200.3B governs "management of support service contract activity." The Order states that a support contractor cannot be used to perform "Government management functions."[9] It provides that DOE must maintain adequate in-house technical capability to ensure that it can "make the value judgments and exercise the discretionary authority required to retain control by the Government..."

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9 The Order defines "government management functions" to be "Those functions so intimately connected with Government operations that they must be performed by Government employees in order to retain essential control and responsibility. These functions involve exercising discretionary authority and making final value judgments which affect the day-to-day or long term development, execution, and evaluation of Government programs." The Order provides a list of 23 examples of government functions which is not all inclusive.

Order 4200.3B requires that all requests for support services be accompanied by a justification which shows that the requirements of the Order have been met. For contracts in excess of $250,000, the justification must be reviewed by the Director of Administration and the Office of General Counsel.

Contained in the justification, along with boilerplate declarations that the government will retain control, there is often candid admission that support is needed because DOE is not allowed to employ an adequate official workforce.

For example, in a contract to support the Assistant Secretary for International Affairs, DOE stated:

- "The current and past workload for the organization has been extremely overwhelming...many deadlines are missed...DOE directives are not fulfilled in a timely or complete manner..."
- "The most obvious alternative is to hire more people. This alternative--vigorously pursued in past Internal Budget Review processes has consistently proved futile, due to OMB constraints and other departmental priorities. ...we were advised during these reviews, that we should utilize support service contracts and budget for them, and that is what we have done."
- "Comparable services, meeting comparable needs, are performed by support service contractors in most all DOE organizations."

E. Civil service reduced to contract management

To justify a contract to support the offices of International Security Affairs and Classification, the Director of Resource Management in the Office of the Assistant Secretary for Defense Programs declared that: "While experienced in selected areas, present staff is engaged primarily in the oversight and management of contractor efforts executed by National Laboratory and Headquarters Contractors."

As described below, work under the contract has included the preparation of position papers for international nuclear treaty negotiations and assistance in drafting rules and decisions on the export of nuclear technology.

If the justification is believed, civil servants no longer are capable of preparing official position papers or drafting official decisions:

- "There is no knowledge of comparable services being performed in DOE or other Federal agencies using civil service personnel."

As official DOE documents show, it appears that the civil service has been reduced to contract management.

SECTION II

DEPENDENCE ON CONTRACTORS RAISES QUESTIONS OF CONTROL OVER SENSITIVE GOVERNMENT ACTIVITIES

Contractors are a routine presence throughout the Department. Of obvious importance is their daily involvement in areas that are of paramount national importance and sensitivity.

A. Case study of a support contract

In 1988, DOE entered into a contract to provide broad support for the Assistant Secretary for Defense Programs (ASDP). The contract was to provide 41,000 manhours per year (about 20 people per year) for a five year period. The current total contract value is $14.6 million.

The contract was awarded to a company called Systematic Management Services, Inc. (SMS). SMS, in turn, has subcontractors, including BDM, a major defense contractor, and an affiliate of Ford Aerospace, also a major defense contractor.

Subcommittee staff examined the work done under this contract.[10] The terms of the task orders and the contractor's description of its own work show that Defense Programs is employing a workforce that includes a major defense contractor to perform many sensitive tasks.[11]

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[10] The statement of work is attached at Appendix C-1.

[11] Additional tasks include the maintenance of official data bases, processing of official travel requests, preparation of personnel descriptions, mail room and library support, and the management of the intern program.

1. Contractors are involved in the preparation of Congressional testimony

Contract task order 3.2 is entitled "legislative tracking and information management."[12] SMS monthly status reports, found in DOE procurement files, have repeatedly stated that the contractor "prepares" Congressional testimony for the Secretary of Energy and other high officials.[13] For example:

- "SMS and BDM personnel assisted in collecting, compiling and integrating potential questions and answers for ADM Watkins' confirmation hearings. Similarly, SMS assisted in preparing [Acting Assistant Secretary for Defense Programs] Mr. Wade's testimony before Senator Glenn."
- "[SMS and BDM]...personnel prepared testimony, talking points, briefing books and materials and viewgraphs for Secretary Watkins' April 3, 1989, and Troy Wade's April 6, 1989, hearings...[BDM] prepared a draft statement for

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12 Attached at Appendix C-2 are the task orders and excerpts from the monthly reports quoted below as well as an excerpt from the monthly report on task 4.4 as discussed below.

13 DOE Order 4200.3B prohibits the use of contractors to prepare Congressional testimony. The Order states that specific prohibitions on the use of contractors include:

"(1) Initiating or originating draft testimony..."

"(2) Editing transcripts of congressional committee or regulatory body hearings or drafting, without attribution, inserts to transcripts..."

DOE's construction of this rule appears to vary. In the abstract, officials have little difficulty declaring that it broadly precludes contractor involvement in the preparation of testimony. When shown an example of such involvement, attention is focused on the words "initating" or "originating." In either case, DOE officials agree, in order to be lawful, the work actually done must fall within the scope of the contract.

Secretary Watkins' use in his appearance before the House Armed Services Committee...SMS and BDM reviewed testimony from the Justice Department and EPA, along with draft legislation from Senator Glenn..."

- "Prepared (integrated, duplicated, and quality assured) numerous briefing books that were used by DP Management in House and Senate Hearings. This effort included preparation of Troy Wade's statement for Admiral Watkins' testimony before the House Armed Services' Committee Hearing on May 17, 1989."

In early September, 1989, staff reviewed these statements, and similar statements by other contractors, with headquarters procurement officials. Staff was told that the terms of the contract did not provide for the preparation of testimony, and, therefore, they had no reason to assume a contractor was performing this work. Staff was urged to visit with program officials to assure themselves of the facts.

Shortly following the staff's meeting with procurement officials, an advertisement in the Washington Post stated that Systematic Management Services had two positions available:[14]

- "Duties for these positions include assisting the Department of Energy with legislative analysis, document coordination, testimony preparation and review, floor statement development and preparation of position papers."

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[14]The advertisement is attached as Appendix C-3.

The day after the ad appeared, the Director of Headquarters Procurement immediately asked Defense Programs to review all tasks under the contract to determine whether such legislative work was authorized. The memo stated that "In my review of this scope of work, I do not believe that preparation of congressional testimony, floor statement development, and preparation of DOE position papers on legislative issues is authorized."[15]

In its September 29, 1989, response, Defense Programs assured Procurement Operations that it was "confident that no SMS efforts involve the preparation of congressional testimony".[16] The memo further stated:

- "After a thorough review of all existing and Proposed Task Assignments under the SMS contract...we are confident that no SMS efforts involve the preparation of congressional testimony, floor statement development, or preparation of Department of Energy (DOE) position papers on legislative issues. We are in agreement with you that SMS is not authorized to perform these services under the contract."

On October 16, staff met with DOE officials in the office ("DP-522")[17] responsible for task order 3.2.[18] That office's

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[15]The memo is attached as Appendix C-4.

[16]The memo is attached as Appendix C-5.

[17] The Policy and Evaluation Division (DP-522) of the Office of Planning and Policy, under the Deputy Assistant Secretary for Resource Planning and Management.

[18] Staff initially met with the Contracting Officer's Technical Representative ("COTR"), the procurement office's representative in the program office. As staff learned, in the

responsibilities include the "coordination and integration" of Defense Programs legislative activity.

DP-522 officials stated that 1989 legislative demands included two dozen hearings as well as background briefings for the new Administration. Two or three staff members had been available to deal with legislative activity. Roughly three person years of contractor support for this work has been contracted for. The contractors work alongside DP-522 staff in the DOE buildings.[19]

DP-522 officials had not routinely received the contractor monthly reports. They could not recall all items of work referred to in them.[20]

A DP-522 official offered his recollection of the preparation of Admiral Watkins April 3 hearing testimony identified in the SMS report. He recalled that he prepared a draft of the testimony and showed it to a BDM employee. The contractor employee said "I don't think that's the right flavor" and volunteered to "take a

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case of a large support contract, the COTR, like the procurement office, often knows no more about the work actually being performed then can be gleaned from contract terms. The COTR arranged for staff's meeting with officials who actually administer Task 3.2.

19 As required, the contractor employees have their own office space, a separate room within the DP-522 suite of offices.

20 DP-522 staff characterized the contractor descriptions quoted above as "unfortunate," and suggested that they were puffing, designed to impress contractor management. DP-522 suggested that the contractor role was limited to work such as "coordination" and xeroxing. However, as stated above, DP-522 answers to questions regarding particular assignments confirmed that the contractor "prepared" testimony.

stab at something different." The contractor came back with a statement that the official edited. Both drafts were sent "up into the system." He recalled that the Department preferred the statement that was drafted by the contractor and "prepared with my edits." He, and other DOE officials, emphasized that contractor work is subject to many levels of review by DOE officials. [21]

The legislative work of DP-522 is controlled through a looseleaf "DP-522 Action Items Daily Log" which identifies the work to be done and the individual assigned the "lead" role. The log is prepared by the contractor employees.[22] In most cases, the contractors are identified under "lead." Among numerous other assignments, contractor employees are identified as "lead" in regard to proposed legislation on "Government Contractor Liability," "Contractor Acccuntability and Award System," and "Proposed Rulemaking on Contractor Drug Free Workplace Program."

DP-522 officials stressed that the "lead" assigned contractor employees should be viewed in ministerial terms; for example, they are often responsible for coordination with other offices.

DP-522 made available records related to the legislative work. It was explained that the only remaining file records for some items identified in the contractor status reports was the final DOE version.

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21 The cover pages of the BDM draft, the DOE draft, and Secretary Watkins testimony are attached as Appendix C-9. The documents were provided by DOE on November 2, 1989 after repeated inquiries.

22 A sample from the log is attached as Appendix C-6.

With limited exceptions, the documents made available by DP-522 did not show clear delineations between contractor and government workproduct. In one case, hand written notes on a seemingly official document were explained by DP-522 officials as an exchange between SMS contract employees in two offices. In other cases, work was actually transmitted within DOE under contractor name, but as if transmitted by an official.[23] In other instances, work was transmitted under official name with contractor signature. Finally, in some cases inter-office transmittals under contractor name directed action on the part of the official recipient.[24]

Subcommittee staff requested the headquarters procurement office to ask SMS to make available all work product under tasks 3.2 and 4.4. In response to this request, SMS said:

- "SMS does not create independent contractor work products under these tasks."

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23 For example, the name of a contractor employee appeared on transmittal memos, but with the official ("DP-522") maildrop and DOE building suite number, and no identification of contractor status.

24 For example, a transmittal to the Office of Special Isotope Separation Program under the name of a contractor employee, and with the DP-522 address and phone number, stated:

"While I realize that these questions have been worked over many times, we must provide answers to the Members [of Congress] questions. We have reviewed your material and find that it does not meet the requirements of the task. Please respond to the question posed by the Senator and the comments by DOE officials...If you have any questions, please call. I would like to have the material no later than ...29 August."

- "When SMS supports the development or coordination of a document, notes, drafts, and other working papers are placed in the DOE files."

2. DOE asks contractors to determine the meaning of DOE orders

DOE has numerous orders, notices, and other directives that govern its activities. Contract task 3.1 called on the contractor to review these rules, identify whether they applied to Defense Programs (DP), and determine whether DP was in compliance. The results of this work were a computer data base and a looseleaf binder with capsule summaries of the orders, and requirements for DP.[25]

In August, 1989, under a new task order, SMS was asked to determine actions needed to bring DP into compliance. The government employee monitoring the work explained that the "orders were vaguely written," and "now someone has to determine what those words mean." By its terms, task 4.5 calls on a private contractor to determine DOE's obligations under its own orders:

Subtask 1:

- "The contractor shall examine pertinent Department of Energy documents (e.g., Secretary of Energy Notices, DOE Orders, Headquarters Orders, etc.) to determine those actions

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25 The cover of the March, 1989, edition states that the work was prepared by Systematic Management Sciences. An introduction states that "Directed by [the Acting Director], DP-522, the referenced review of DOE orders was designed to determine Defense Programs' (DP) compliance with all orders which contain DP responsibilities."

required of Headquarters DP line management to assure their compliance and identify Headquarters DP resources needed to implement these actions..."

Subtask 2:

- "The contractor shall identify gaps/weaknesses in the requirements area, and evaluate the DP implementation process across DP programs for consistency and efficiency."

3. The President's report to Congress is the only embodiment of the contractor work product

Another task required the contractor to support the President's Report to Congress on the nuclear weapons complex, a Congressionally mandated report.

The report was the work of a Steering Committee, issued under the President's name. A DOE official provided support to the Steering Committee. In the absence of a staff of his own, the contractor was tasked to staff him.[26] He stated that he has been able to call on five people under the contract, as needed.

In response to a request for contractor work product, the DOE official explained that the only available record is the President's report itself. He explained that the daily work product of the contractor, such as meeting agendas or briefing materials, is not retained after use. In addition, the contractor prepared "strawman" documents which, upon review by officials, may

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[26] The DOE official stated that "I am the first to agree that this is an expensive arrangement we've been forced into." In addition to day-to-day support from the SMS contract, he relied upon other contracts.

be incorporated in succeeding documents. The official stated that the final report was reviewed on a line by line basis by DOE officials and OMB.

Secretary Watkins has established a new Task Force to follow upon the President's report. The same DOE official, now Deputy Director of the new Task Force, is again staffed by 3 to 4 contractor employees.[27]

4. Contractors are supporting the Office of the Special Assistant to the Secretary

In the spring of 1989, Secretary Watkins determined to give the highest priority to the clean-up of the nuclear weapons complex. A special assistant, Mr. Leo Duffy, was named to head this effort. The SMS contract was called on to support his office. The contractor's report for the month of June, 1989, contained the following:

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27 The official provided staff with contractor work product which had been prepared for the initial Task Force meeting, and not yet discarded.
One document described and discussed the assumptions of the Reagan Report, a second contained slides showing the Task Force's purpose and composition, and a third is headed "Opening Remarks" for the DOE official. That document stated:

> "8. Contractor support. We have several contractors here in support of my office. If you need anything, they are here to do your bidding. To facilitate coordination, request their services through me. Also, we will have a few contractors sitting in on the team sessions to help facilitate the discussion. Their involvement has been coordinated with the team leaders."

The DOE official stated that the contractor staff was presently drafting a document for internal DOE use as basis for response to public inquiry.

4.4-DOE Environment and Waste Management Support

- "SMS and BDM supported S-1 [The Office of the Secretary] on this task by assisting the Office of the Special Assistant to the Secretary for Coordination of DOE Environment and Waste Management in the set-up of this office and by coordinating, assisting, integrating, and performing various support activities. Three new SMS employees are supporting this task."
- "Mr. ___ provided task leadership and technical support services for preparing DP staff testimony, issue papers, and other pertinent material..."
- "The SMS team drafted testimony inserts describing the 5-year planning initiative for the Secretary's June 15th appearance before the Senate Appropriations Committee and the Acting Asst Sec Nuclear Energy (ASNE) June 6th appearance before the Senate Appropriations Subcommittee on Energy and Water Development; and prepared testimony and briefing materials for June 6th appearance of L. Duffy before the Senate Committee on Armed Forces..."

The SMS contract is not the only contract called on to support the Office of the Special Assistant to the Secretary. BDM itself evidently supports that Office under its own contract, in addition to its subcontracting to SMS.

The April 3 Congressional testimony prepared by BDM for Secretary Watkins stated that the Secretary's highest priorities for the nuclear weapons complex included:

- "Development of a 5-year plan which establishes specific budget objective and goals for the waste clean-up at each DOE site."
- "Elimination of the remaining obstacles to the opening of the Waste Isolation Pilot Plant (WIPP) in New Mexico."

BDM's August, 1989, status report for its contract to support the Office of Defense Waste and Transportation Management states:

- "BDM supported the Office of the Special Assistant to the Secretary for Waste Management. BDM prepared presentation materials and handouts for the Secretary's briefing to the National Press Club on the Five Year Plan. BDM printed the Five-Year Plan and sets of Activity Data Sheets for the DOE public reading rooms and congressional offices."

BDM's August, 1989, status report further listed among many other items:[28]

- "BDM assisted in preparation of DOE's position on NAS WIPP [National Academy of Science Waste Isolation Pilot Project] Panel Recommendations which, in NAS's opinion, had not been accepted by DOE."
- "BDM prepared and revised material for [DOE Special Assistant to the Secretary, Under Secretary, and Secretary] Duffy, Tuck, and Watkins briefings concerning 5-year plan."
- "BDM provided a draft briefing on Defense Waste Management to be given to the new Assistant Secretary for Defense Programs designate, Mr. Victor Stello."

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[28]The status report is attached in Appendix A.

- "BDM provided input to appointment of Blue Ribbon Panel for WIPP."
- "BDM assisted in preparation of WIPP related fact sheets, issue papers, and talking points for the Secretary and obtaining appropriate concurrences."
- "BDM assisted in the preparation of draft testimony and briefing papers for Congressional testimony."

5. The ASDP support contract is only a fraction of the contractor's total DOE work

The discussion above focuses on contractor work under a single support contract. The work of SMS and its subcontractors, like that of many DOE contractors, is not limited to a single contract. Charts prepared by the companies for DOE in 1987, show DOE's reliance on the contractors includes field, as well as Headquarters activities, and extends beyond Defense Programs to other programs as well.[29]

6. DOE control is questionable

DOE rules, as well as sound management practice, direct that contractors must be carefully limited in their "support" of basic "governmental" activities. Tasks that ask a contractor to "determine" DOE's obligations appear to go beyond this limitation. Furthermore, certain tasks which seem to be limited to acceptable work, such as the "Legislative Tracking and Information Management" task, actually involve the preparation of congressional testimony.

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[29]The charts are attached at Appendix C-7.

As procurement officials agree, contract terms should properly limit and clearly state what is the work to be performed. This is important because procurement officials admittedly do not follow actual performance under the contract, and official records do not readily permit distinction between official and contractor role. As illustrated in the SMS case, it requires detective work to unravel the role actually played by a contractor.

Where a contractor works daily in government offices at the highest levels, the question of whether the contractor has any potentially conflicting interests should move from the realm of scholastic debate to practical need. The need is accented when there is no assurance that legally responsible procurement officials know what the contractor is actually doing.

In section V, this report focuses on the conflict of interest procedures DOE applies in its use of contractors. These procedures seek to compare interests disclosed by the contractor with the work it is assigned. BDM's status as a significant defense contractor is a matter of public record. DOE is also aware that SMS has worked at field operations that are components of the DOE nuclear weapons complex. The procurement office's limited awareness of work being performed under the contract, however, illustrates that even where disclosure is present, the DOE system does not routinely couple the information with information about the work actually being performed.

Even so, the SMS contract's sweeping statement of work gives loud notice that the contractor will be at the heart of official

decision-making on the defense nuclear programs. It would seem reasonable to expect that the officials with legal responsibility for the contract address the possibility that reliance on the contractor for legislative work may pose a potential for conflict of interest that requires, at the least, mitigation or public disclosure.

The SMS contract raises questions concerning the DOE's intensive reliance on contractors. These include, for example:

- Should the DOE be relying on a contractor to determine the meaning of its management orders, prepare its testimony, and staff its most basic task forces?
- Is there adequate disclosure within DOE of the use and role of the contractor?
- In the absence of contractor work product, how do DOE officials know what the contractor role is?
- Where contractors provide daily staff work for multiple DOE offices in the absence of adequate official staff, is it realistic to assume officials can assure that they retain control?
- Where contractors staff the highest level policy-makers on questions regarding the nuclear weapons complex, and also work for, or are themselves, defense or DOE weapons complex contractors, what actions does DOE take to assure limitations on potential conflict of interest?
- What are the relative monetary costs of employing contractor and official workforce to perform this work?

B. Despite potential conflicts of interest, DOE and EPA rely on a contractor workforce

One of the most critical and costly public management problems facing the country is the clean-up of the nuclear weapons complex. This task will require full-time efforts for years, probably decades, to come. DOE, however, has a long-standing dependence on a contractor workforce to serve as the backbone staff in its environmental reviews and investigations.

1. Environmental oversight depends on contractors

The Office of Environmental Audit was established to assure that DOE operating facilities are in compliance with all applicable environmental requirements. In 1985, the Office undertook "environmental surveys" of DOE facilities to "identify and prioritize areas of existing risk DOE-wide." In September, 1989, this office employed 13 full-time employees and a contractor workforce of approximately 50.

The primary contractor relied on by the office is NUS. NUS is an environmental engineering firm which has been working for DOE and its predecessors since the early 1960's. NUS's subcontractor is ICF.

The NUS contract to support the Office of Environmental Audit was awarded in 1984 and renewed for a two year term in 1987.

On June 27, 1989, Secretary Watkins announced that "Tiger Teams" were being sent to review facilities and to report to him on the state of the weapons complex.[30] On July 3, the Acting

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30 The June 28, 1989, New York Times headlined that "Energy

Assistant Secretary for Health and Environment requested approval to modify the NUS contract to provide staff for the Tiger Teams. The request called for a one year extension of 66,000 man hours (approximately 33 people a year), with two three-month options. The modification was approved on a sole source basis.

The largest component of each Tiger Team is the "environmental subteam." Environmental subteams are, in turn, primarily composed of contractor employees.[31]

2. The DOE Inspector General has not addressed DOE's reliance on contractors

In July, 1989, the DOE Inspector General issued a report on the environmental survey program.[32] The IG found that the survey teams failed to properly document their work, and, therefore, that the reliability of the entire effort was in question:

- "We found that working papers of the survey teams did not meet the established criteria for providing documented

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Chief Says Top Aides Lack Skills to Run U.S. Bomb Complex." The article stated that the Secretary said that "managers and supervisors in his department lacked technical skills needed to run the bomb production system and were presenting him with unreliable information on problems at the plants." The Times quoted the Secretary as stating that "I don't have the data base coming to me that I need. I have omissions in the data base."

31 The Tiger Teams and environmental surveys, of course, are only one component of the management of environmental cleanup. However, as illustrated above, the other components are staffed by contractors as well.

32 Review of the Environmental Survey Program, July, 1989 (DOE/IG-0268). The IG used its own support service contractor to prepare the report.

support for the environmental findings in the survey reports. Also, management's decisions were not substantiated in accordance with established criteria for about 15 percent of the findings in the 10 Preliminary Survey Reports we reviewed."

- "Without comprehensive, well-organized working papers to support the survey conclusions, management cannot be assured that the $60 million effort provides a sound basis for prioritizing environmental problems. As a result, the Department's programming and budgeting for corrective actions, based in part on the environmental surveys, could be questioned."

The IG report did not discuss the use of contractors, or the relative levels of official/contractor staff. Nor did it consider whether, given the relative contractor/official staffing levels, management improvement was a feasible suggestion.

3. DOE has realized the potential for conflicts of interest

NUS is affiliated with other companies that perform engineering and construction work and that work for the nuclear industry. NUS itself performs environmental services for numerous public and private entities. In addition to other work for DOE HQ, NUS has worked directly for components of the nuclear weapons complex. This other work has included environmental support to the DOE Savannah River and Oak Ridge facilities.

As discussed in section V, DOE regulations provide that DOE must give public notice when a contractor is used in a context

that, by DOE's lights, presents a potential for conflict of interest, even where DOE assures that it will undertake to mitigate this potential.

When DOE initially employed NUS to support the Office of Environmental Audit, it gave public notice that the contract was being "awarded to NUS despite the existence of potential organizational conflicts of interest because it has been determined that the award is in the best interests of the United States."[33] The notice stated that no other viable contractor had "little or no likelihood of organizational conflicts of interest."

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[33] In a September 28, 1984, Federal Register notice, DOE stated:

> "...the work to be performed under the proposed contract could create a potential conflict of interest because of the nature of the proposed support services contract, and thereby influence DOE decisions so as to benefit the contractor's other Government and DOE business activities. In addition, there may be the appearance that, through this support contract, NUS Corporation could potentially influence decisions in such a way as to benefit their other organizational decisions."
>
> "NUS is affiliated with the Halliburton Company...and their subsidiary, Brown & Root, Inc....Brown & Root, Inc., is engaged in performing a broad range of engineering and construction services in Government, industrial and marine areas."
>
> "...The NUS Training Corporation provides personnel training programs and services primarily to the fossil and nuclear power industry. The NUS Process Services Corporation provides on-site, low level rad-waste processing services to the nuclear utility industry. The NUS Operating Services Corporation provides a variety of services to assist electric utility firms in the operation of coal and nuclear fired power plants. The Equipment Exchange Company (EQEX) provides equipment brokerage services primarily to the nuclear utility industry."

In 1987, DOE renewed the environmental survey contract with NUS. However, DOE did not publish a Federal Register notice. Nor was a Federal Register notice submitted upon the sole source award in the summer of 1989.

Internal DOE documents and discussions with DOE program and procurement officials indicate that DOE has continually sought to address the question of potential conflict posed by reliance on NUS. In particular, there has been concern about the Headquarters use of a contractor, such as NUS, to review field operations, like those at Savannah River, for which the contractor has performed significant related work.

The publicly available environmental survey of Savannah River, however, shows that NUS served on the survey team. Audit program officials say the team was supplemented with additional contractor personnel to attempt to ensure the integrity of the work. However, the DOE did not provide a Federal Register notice of the steps taken to mitigate potential conflict. DOE has informed subcommittee staff that the Action memo to the Under Secretary which states the alternatives to the contract and the rationale for selecting NUS is not releasable to the public under the Freedom of Information Act.

4. EPA does not act as an independent check

In surveying DOE facilities, basic yardsticks are provided by Environmental Protection Agency (EPA) regulations established under the Resource Conservation and Recovery Act (RCRA) and CERCLA

(Superfund). EPA reliance on contractors in the development and enforcement of these rules is overwhelming.

EPA's July, 1989, contract list identifies NUS as having contracts valued in excess of $500 million dollars. The lion's share of this money comes from contracts to "assist" EPA in enforcement and remedial actions. NUS is one of a number of contractors to whom EPA has entrusted the daily work of RCRA and Superfund investigation, enforcement, and the direction of clean-up.

ICF is NUS' subcontractor under the DOE environmental survey contract. ICF's EPA work has involved ICF in virtually every major EPA program, from rule writing to rule enforcement. The July, 1989, EPA contract list identifies 16 ICF contracts valued at close to $250 million.

In a February, 1989, hearing, the Subcommittee examined the role of ICF and other contractors in the Superfund program. EPA has since acknowledged the basic questions of the loss of official control to contractors with obvious potential conflict of interest posed by its Superfund program.

EPA has recognized that its practices are risky both because they involve contractors in policy-making and because of the potential conflict between working for agency headquarters and field offices.[34]

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34 In a May, 1989, memo, an EPA procurement official charged with consideration of the conflict of interest problem told the Director of EPA's Procurement and Management Division :

"There are three active Superfund policy contracts..."

"All three policy contracts contain very broadly written

EPA, in sum, relies heavily on contractors to draft and enforce its rules and oversee its operations. EPA is beginning to recognize the problems posed by this dependence. However, any hope that EPA provides an independent official backstop of DOE's limited official workforce is illusory.

DOE's continued and intensive reliance on a contractor workforce in environmental oversight of the nuclear weapons complex raises the following questions:

- Are the relative levels of official staff adequate to assure official control of DOE's environmental surveys and investigations?
- The clean-up of the nuclear facilities will take years, may cost hundreds of billions of dollars, and depends upon the maintenance of high public confidence in DOE actions. Can DOE afford to rely on a workforce comprised significantly of contractors it has found to be possessed of a potential conflict of interest?
- Is DOE adequately informing the public of the interests possessed by contractors who are the backbone of its

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statements of work that allow OERR to use the contractors to perform a wide range of functions, many of which could be done by agency staff (if such staff were available)..."

"These kinds of assignments are sensitive for two reasons. First, they are the sort of activities that are inherently judgmental in nature and require complete impartiality. Ideally, these assignments should be performed by Governmment employees, with an absolute minimum of contractor assistance. Second, they are front-end activities in the development of the Superfund program..."

"To contract out these activities is risky at best. To turn them over to RAC's [contractors with field contracts] is akin to having the foxes guard the chicken coop!"

environmental teams, and of actions taken to limit conflict of interest potential?

C. Staffing limitations force reliance on contractors for sensitive international activities

As the support service justification quoted in Section II(E) illustrates, in the absence of an adequate official workforce, DOE has relied on contractor staff for the performance of sensitive activities regarding nuclear arms control and the terms of international use of nuclear materials.

The task orders under this contract confirms the intimate involvement of contractors in basic policy and decision-making. For example, tasks under the contract to support the Office of International Security Affairs include:

- "Assist in the preparation of U.S. position papers";
- "Monitor Arms Control Negotiations";
- Nuclear Technology "Export Licensing Program Support and Analysis." For example, "Contractor personnel will participate as part of the 810 [Part 810 of DOE regulations] revision task force, will recommend changes to the regulations based on comments received from the public and will participate in the writing of the final revised regulations.";
- "The contractor will conduct analyses of specific export cases and policy issues...will review pending cases and policy issues ...recommend possible decision alternatives. Contractor personnel will also participate in ECWG [Export

Control Working Group] meetings and will assist in the preparation of ECWG case decision documents. Other activities...such as the formulation of various types of decision-making guidance and criteria, will also be performed by the contractor."

- "Backstopping support for Major Treaties and Special International Conferences." The task order stated that:

> "First, pre-conference planning will entail the drafting of DOE and US position outlines on the likely areas of contention. Second [conference] support will be provided throughout the conference. Meridian personnel familiar with the relevant nuclear non-proliferation and technology transfer issues will be available to meet quick-response queries. Third, post-conference analysis by the contractor will specifically address the most contentious issues allowing for a retrospective view of U.S. policy."

The Assistant Secretary for International Affairs and Energy Emergencies employs a contractor to support the Office of Nuclear Non-Proliferation. Once again, the justification declared that limits on official staff force a reliance on contractor assistance in DOE's basic work. The contract justification shows that even in high visibility and sensitive programs, official staffing is declared to be inadequate to do the work expected of the civil service. The justification stated:

- "The staffing levels for the organization basically responsible for these efforts has been reduced to a level of 50% of that in 1982, with no reduction in the effort required...in fact there have been additional duties placed upon it..."
- "... the staffing level of the Office is totally inadequate to meet the demands placed upon it and, thus, outside assistance is required...
- "The proposed work is similar to that performed by civil service personnel but cannot be accomplished within current and proposed staffing .

The contractor, ERCI, evidently played a significant role in US approval of the US-Japan Agreement for Peaceful Nuclear Cooperation. DOE did not disagree with the following contractor descriptions of its work:

- "[the contractor] was asked to develop draft analyses to support key elements of the Agreement and to develop specific language for inclusion in DOE analyses subject to interagency review and concurrence and to subsequent Congressional scrutiny...the elements of the Agreement for which ERCI was asked to develop analysis were the most sensitive aspects of the Agreement...Unpersuasive analysis would have jeopardized Congressional review of the Agreement."
- "[the contractor] was requested to prepare, on a crash basis, draft sections for possible use in an environmental assessment to meet deadline for submittal of said agreement

to the President for approval. [the contractor] was engaged after DOE internal resources and another contractor had failed to prepare acceptable documents on a timely basis..."

- "As the proposed US-Japan Agreement encountered serious opposition from some quarters, [the contractor] was asked to prepare urgently an analysis of the arguments being advanced against the agreement and possible responses thereto for potential DOE use..."

DOE program officials agreed that the contractor provided highly skilled "bread and butter" services. Subcommittee staff were told by program officials that they were aware that the contractor had a Japanese affiliate and that this information was common knowledge and well-known to them at the time of the assignments (1986-87).

Questions raised by DOE reliance on contractors for international nuclear policy work would seem to include:

- Should contractors participate in writing export regulations, decisions on export requests, the formulation of decisionmaking criteria, the preparation of arms control policy statements?
- Does DOE have official staff adequate to assure control and direction of contractor staff?
- Are all relevant foreign, as well as domestic interests reviewed by legally responsible officials in connection with work actually performed?

- Should there be public disclosure of the use of the contractor and the nature of any further relevant interests?

D. DOE relies on contractors for security functions

DOE is vested with primary responsibility for the operations of the country's nuclear weapons facilities, as well as other sensitive activities. Along with other Federal agencies, DOE relies heaviiy on private guard services to provide daily security for its offices and facilities.[35] However, DOE's Office of Safeguards and Security increasingly relies on contractors to provide all further elements of its security system as well. Contractors are employed to:

- Inspect the quality of security at DOE facilities;
- Compile and analyze information on potential threats to DOE facilities; and
- "Support" the Annual Report to the President on Domestic Safeguards and Security.

DOE relies on a support contractor to assure the integrity of the formal agreements between Headquarters and field offices (Master Safeguards and Security Agreements or "MSSAs") which outline the level of security provided at each facility. The support contract statement of work identifies the "required" work to include:

- "Assist in structuring each agreement...;"

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35 For example, DOE's printout of contracts shows well over $500 million in contract value for Wackehut Services Inc., a provider of security guard services, alone.

- "Monitoring agreement changes and requirements for modifications;" and
- "Conduct annual reviews...and recommend...any necessary change."

As always, the work is subject to official review and approval. However, the reviews performed under MSSAs are detailed, as well as critical, components of DOE security. While contractors have to follow identified criteria, contractors are employed because officials do not have the time to perform the detailed reviews required.

Further, this office is in charge of DOE's security clearances, termed Q clearances. DOE has completely contracted out administrative hearings on challenges to security clearances. Moreover, upon receipt of an adverse decision, the immediate appeal is also to the contractor.[36] Final authority for clearances remains in the hands of the Secretary of Energy.

The contracting out of hearings and appeals would seem to raise basic questions of law, as well as policy.[37] DOE

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36 The hearing Task Order provides that the contractor will "conduct an administrative hearing, as outlined in section 710.26 of the criteria [10 Code of Federal Regulations Part 710.26]...and ...furnish a written recommendation on the applicant's eligibility for a DOE access authorization.." A further Task Order provides that upon "receipt of a request after an adverse decision by a Hearing Officer...conduct a review of the case by three Personnel Security Examiners..."

37 The official in charge of the support contract was not in charge of the hearing task; she initially explained to subcommittee staff that the contractor is merely relied on to set up the hearing, and she also appeared to be surprised upon confirmation that administrative hearings were contracted out. As a long-time employee of DOE and its predecessors, she recalled

regulations state that these functions may be delegated to "officers" of DOE.[38] DOE's rules of conduct for employees, which apply to DOE "officers,"[39] do not apply to contractor employees. The DOE Office of General Counsel confirmed that the question required examination. However, the subcommittee staff inquiry did not produce any legal opinion that supported the decision to contract out administrative hearings.

It appears that the decision to contract out administrative hearings is an act of administrative triage. DOE officials recognize that limits on official manpower require the reduction of the official role. Administrative hearings were evidently deemed less sensitive than other activities still performed by officials.

As DOE officials acknowledge, the contracting-out of DOE security has turned government upside down in more ways than one. Not only is government relying on contractors to perform a most basic government function, but the contractor employees relied on, with limited exception, were trained by government and gained their experience as government employees.

Questions posed by DOE's reliance on contractors for security include:

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days when contractors were a scarce presence in the Germantown offices.

38 See volume 10 of the Code of Federal Regulations Part 710, Appendix A, at Section 161(n).

39 See volume 10 of the Code of Federal Regulations, at Part 1010.103(j).

- What is the level of official workforce required to assure official control of contractor activities?
- Should DOE rely on a contractor workforce as the backbone for security activities?
- Is the reliance on contractors for an activity such as the conduct of an administrative hearing lawful?
- Has DOE considered the relative costs of official and contractor manpower in its determination to rely on contractor support?

SECTION III

MEANS OF MANAGING THE CONTRACTOR WORKFORCE ARE DEFICIENT

A. DOE top management lacks information regarding its contractor workforce

DOE top management has a computerized "manpower information system" which permits quick access to the number of employees working for each DOE subdivision, the amount spent on these employees, and their level of skills.[40]

As of September 30, 1989, DOE had 16,005 full-time employees. Of this total, 1,428 work at the Federal Energy Regulatory Commission, an "independent" agency; 5,428 work at the power agencies (separate entitites which market electric power)

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40 DOE management officials use two management information systems, "MURS" and "EMPRIS" to keep records on official manpower. They explained that official manpower can be viewed as a fuel to be burned. MURs tracks the use of official manhours, in order to assure compliance with budget and personnel ceilings, and to determine whether official resources are available for new requirements. EMPRIS supports the official personnel system. DOE management offices relied on their support contractor in the development of these systems.

and technical centers; 4,665 work in field offices; and 4,488 work at DOE headquarters. The information is available in further breakdown, for example, by the number of employees by office or division.

There is no comparable information available for contractor employees. In fact, it is extremely difficult to obtain even the most basic information on the dimensions of the contractor workforce.[41] Indeed, central management has formally recognized that, "DOE is not able to identify the FTE level of advisory and assistance services received or accurately determine the funds spent for advisory services." As discussed below, it has therefore tasked a contractor to advise on the requirements for such information.[42]

B. DOE does not evaluate the relative costs of contractors

As is made clear by official justifications quoted above, ceilings on official personnel often dictate the use of a private

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41 The procurement office that serves DOE Headquarters maintains (with contractor assistance) a computerized list of all contracts it administers. The list contains generic descriptions which indicate support services (e.g., "technical and administrative support"). However, Headquarters offices also use contracts that are awarded by DOE field offices. Thus, the Headquarters procurement data does not permit identification of all support contracts relied on by Headquarters.

42 The Office of Organization and Management Systems, under the Assistant Secretary for Administration, told staff it performs periodic "quality assurance" reviews of the use of support contractors in components of the agency. The reviews take 1-2 weeks, and include examinations of procurement files, and talks with officials and contractors. Staff was told that the reviews do not result in written reports. Rather, offices are told, "if we can find this so can the GAO and IG," as a prod to self-improvement.

workforce. The relative costs of adding contractor and official staff is simply not routinely considered.[43] Staff inquiries of officials in the Office of the Assistant Secretary for Management and Administration confirmed that no formal analysis is done at the central management level either.[44]

Discussions with DOE officials indicates that analyses could be instructive. In programs like environmental oversight, where current contractor employees have been working full-time for DOE for years, and will be needed for years to come, the economy of contractors is not obvious.

Officials of the Office of Environmental Audit indicated to subcommittee staff that the use of contractors was dictated by limits on official personnel, not manpower costs or the requirement for a flexible workforce.[45] They stated that at

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[43] The failure of the government to examine the relative costs of a federal and private workforce is striking. Under OMB's Circular A-76, agencies are required to perform cost analyses to determine whether commercial services could be performed more cheaply by the private sector. Circular A-76, however, does not apply to consulting and support contractors. It recognizes that inherently governmental functions should not be contracted-out. Therefore, contracts awarded for support services, in some cases apparently inherently governmental functions, are not subject to any cost analysis.

[44] Management officials stated that comparisons would not necessarily be easy. They pointed out that a critical question in any analysis is whether government service is sufficiently attractive to recruit talent on present terms and salary levels.

[45] It is often suggested that the use of a large firm such as NUS is advantageous to the government because it permits the government to draw on services from hundreds (or thousands) of individuals, without committing to fulltime employment (and pay) of particular individuals. Officials of the Office of Environmental Audit stated that the ideal workforce for that long-term effort would consist primarily of employees dedicated on

current government pay levels, an official workforce would clearly be cheaper than the support contractor.[46]

The largest official Headquarters workforce is that of the Assistant Secretary for Defense Programs (ASDP). According to DOE, in October, 1989, ASDP employed 518 official full-time employees, at a total annual cost, including health and retirement, of $28,515,614.[47] Information made available by DOE indicates that the amount spent on support contractors approaches, and may even exceed, the cost for federal employees.[48] However, ASDP told staff that the private workforce is only about half the official workforce. Thus, the contractor workforce would appear to be more costly. ASDP cautioned that staff was comparing "apples and oranges"; however, DOE does not appear to have any formal analysis to offer as an alternative.

The greatest benefit of any analysis could be DOE's determination of what its contractors actually do. If DOE is

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a full-time basis with a commitment to the problem.

46 This assumes that government service can attract talent of the quality available under contract.

47 The total assumes salaries of $24,582,450, and a health and retirement benefits loading factor of 16%.

48 Data provided by Defense Programs shows that ASDP is currently being served by 16 support contracts awarded by DOE Headquarters Procurement. The total contract value, including options, of these contracts is $99,879,671. Adjusting for the multi-year terms of the contract, the average yearly contract value is $24,706,133. However, DOE DP officials told staff that DP also relies on contract support obtained under contract from field contract offices. The $24.7 million total must be adjusted upward for these contracts, but a complete listing of these further contracts was not readily available.

paying the contractor employees upwards of $100,000 per year for "legislative assistance" "preparing testimony," or "xeroxing and coordinating,"[49] as some DOE officials suggest, then cost savings should be available.

C. It's hard to control contractors who are invisible

As illustrated in the case of the Defense Programs support contractor, the daily role of contractors is often invisible.[50]

Any given official is usually aware of his own use of contractors. However, memos and reports received from elsewhere in DOE often bear no signs of a contractor role. Staff found that officials were unaware of the role of contractors in work for which they had responsibility.

For example, staff of the DOE Congressional liason office was unaware that contractor employees, in addition to Congressional liaison staff, routinely attend Congressional hearings to report back to DOE. Another example concerns the DOE rules which prohibit the use of contractors to contact, on behalf of DOE, public or foreign officials, or to speak before public or private groups as representatives of DOE. However, contractor reports to the DOE describe their contacts with U.S. and foreign officials on behalf

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49 The basic components of the fee received by contractors are: labor costs; overhead; "general and administrative costs"; and profit or fee. Thus, the salary of the contractor employee will be a fraction, often less than 50%, of the total.

50 Many contractor employees work at DOE Headquarters in the Forrestal building, or in the Germantown, Maryland complex. They work next to government officials, although, as required by law, they are assigned discrete office space. DOE employees not infrequently noted that the number of contractor badges sometimes seems to exceed the official badges.

of DOE. In one recent case, a contractor reported to DOE on its meeting with a state Governor, concerning nuclear waste problems. An official in the Office of the Special Assistant to the Secretary (which has the lead responsibility for nuclear weapons plant cleanup) assured staff that a Federal official must have accompanied the contractors. His inquiry of the responsible Federal official confirmed that the private employees, as they reported, may have met with the governor by themselves.

D. Contracting officers lack complete information

Contracting officers,[51] have legal responsibility for the contracts they sign. As illustrated in the case of the ASDP support contract, procurement officials are often unaware of what the contractor is actually doing.[52] Task orders allow program officials to call on the contractor for help on a generic and as

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[51] Technically, legal authority to enter into contracts is delegated from the Secretary of Energy to the Procurement Executive, who then redelegates authority to the Heads of Headquarters and Field contracting offices. The head of each office then appoint "contracting officers", who have formal responsibility for individual contracts. The delegations are formal written delegations containing dollar limitations and conditions. The contracting officers, in turn, rely on "contract specialists," who lack formal authority, to monitor contracts issued under contracting officer authority. At DOE Headquarters, a contracting officer is usually a GS-13. The DOE rules providing for contractingy authority appear at Volume 48 of the Code of Federal Regulations, Subpart 901.6.

[52] The discussion above should not be read to suggest a lack of diligence or competence on the part of procurement officials. Those who examine DOE procurement files are struck by the fact that the statement of work often lies buried beneath page upon page of cost provisions, boilerplate, and all manner of special clauses for all of which the procurement office has legal responsibility. Given limits on manpower, it is not unreasonable to assume that "COTRs" as discussed above, must be relied on to watch actual work under the contract.

needed basis, leaving the procurement officials unable to closely monitor the contractors.

Contracting officers (COs) are responsible for two dozen or more contracts, under which DOE purchases all manner of goods and services. The CO cannot be expected to be experts in all the items purchased, or the programs that require them. Once a contract is awarded, the CO is not expected to monitor the work actually performed. The contractor is required to provide the CO with periodic summaries of the work performed. As a procurement official said, "We generally do not read them."[53]

The CO relies on a "contracting officer's representative" (COTR) to serve as his eyes and ears in overseeing performance of work. The COTR works in the program office which uses the contractor. COTRs in turn assume that oversight is being conducted by the program officials who use the contractor under individual task orders. Once again, when the task orders call for work on a generic or as needed basis, the COTR does not know the work product actually produced by the contractor.

E. Manipulation of language is DOE's only real control

Procurement officials are aware that DOE rules limit the role of contractors in the performance of "inherently governmental functions." Their fulfillment of their obligation to enforce

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53 Task orders require that the contractor provide a copy of all "deliverables" to the contract officer. However, in an understandable effort to limit paper waste, this requirement is satisfied by trasnmittal of the cover letter only. More importantly, in many cases, task orders do not require "deliverables," so the procurement office may have no routine notice of work actually produced.

these rules is, as a practical matter, limited to "wordsmithing." Thus, statements of work are reviewed to ensure the presence of boilerplate stating that the work will be "advisory" and subject to official "review and approval."[54]

It is necessary to go no further than the procurement office's own files to see the limitations of wordsmithing as means of control. The starkest demonstration of the limits of wordsmithing lies in the comparison of the official descriptions of the contractor role with the descriptions provided by the contractors themselves.

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54 Even so, contracts call for work on terms not easily reconciled with the rules. For example, contractors are asked to:

- "Conduct assessments and analyses...including the preparation of formal decision documents" (a clean coal technology contract)
- "Prepare and review" documents, with "deliverables" to include "Budget Submission," "Budget Briefing Q and As," "Congressional Testimony" (Defense Office of Nuclear Materials)

DOE Order 4200.3B (5)(g) states that "a support service contractor must not be allowed to identify its own work requirements or to write its own task assignments for the existing contract." Task number one in a contract which calls on the contractor to identify "impediments to the revitalization of nuclear power" states:

> "It is anticipated that there is an achievable set of conditions under which investment in a new nuclear plant would be attractive. In connection with the set of conditions, the contractor will develop and recommend a proposed set of <u>future task assignments</u> that would support the documentation and further definition of conditions. These tasks should be prioritized as to provide a step-wise guide of actions..."(underlining added)

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SECTION IV

DOE USES CONTRACTORS TO MANAGE ITSELF

DOE relies on support contractors to manage DOE itself. Even for formal analysis of DOE's contractor workforce, it relies on a contractor.

A. DOE's central management offices relies on a contractor

For the past decade the Assistant Secretary for Management and Administration has employed Booz Allen and Hamilton as its basic support contractor. Under an especially broad statement of work, the contractor has been continually called on by DOE to help manage DOE itself.[55]

Booz Allen has been asked to draft official job descriptions, to help "implement" the Senior Executive Service System, and to develop and implement the computerized systems that report on official manpower. In April, 1989, Booz Allen was tasked to help develop a "Strategic Human Resources Planning System" to "identify staffing requirements which will enable us to act now to ensure that future needs are met." The task order explained that:

- "Since the Department does not have any experience in this area, we need to gather information about how other organizations have established and operated such systems.

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[55] The statement of work lists nine categories of activities which Booz Allen's work "may include, but will not be limited to." In each case, further examples are given. The categories include "general management studies," "personnel studies," "automated data processing studies," "administrative services studies," "cffice automation studies," "financial/accounting/pricing studies," "management information systems studies," "A-76 studies," and "faciliities/real estate studies."

The contractor will assist us by providing firsthand, experiential insights into approaches used in the non-government sector, basic principles of SHRP, and key factors which can lead to success or failure..."

Congress has determined that agencies must provide periodic reports on the integrity of financial management. In 1989, Booz Allen conducted the reviews of DOE facilities required to demonstrate compliance with the Federal Managers' Financial Integrity Act.

The Booz Allen contract also calls for the contractor to provide DOE with basic advice on the proper balance between the official and contractor workforce. Thus, the contract is available to perform "A-76" cost comparisons, which are employed in determining whether work should be contracted out or performed in-house.

In 1988, Booz Allen was tasked to determine the adequacy of DOE information on support service contractors, such as Boox Allen. The task order stated:

- Revised OMB Circular A-120, "Guidelines for the Use of Advisory and Asssistance Services," Section 8A, requires each agency to "maintain an accounting or information system which effectively monitors and reports advisory and assistance services."
- "DOE is not able to identify the FTE level of advisory and assistance services received or accurately determine the funds spent for advisory services."

B. Contractors are used to train management and procurement officials

DOE relies on contractors to train its staff, and to provide basic training manuals, including manuals for training the procurement workforce.[56] At least one training contractor has been at work continually since DOE's creation in 1977.

C. DOE's Inspector General relies on contractors

The DOE Inspector General's office has not been immune from limits on official staff that dictate the use of contractors to perform basic work.

The statement of work in the IG's current basic support contract to support Headquarters office audits is particulary broad. The preface explains that:

- "...the contractor shall be required to provide audit services relating to any or all Department of Energy organizations, programs, activities and functions, including but not limited to the administrative/management components; research and development activities conducted at Government or contractor facilities; general construction, engineering

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[56]The statement of work for one such contract explained:
"The Department of Energy (DOE) is the leading Federal civilian agency in terms of procurement volume...over 500 employees are responsible for effectively carrying out the procurement and assistance function..."
"The task of the contractor will be to take existing DOE material on Basic Procurement and refine, develop, and deliver a 2-week Basic Procurement Training Program that will become an integral part of the Procurement and Assistance Skills Training Program. This training program will be presented Departmentwide at selected sites."

or texchnical analyses; activities at national laboratories....."

Just as the IG's office itself must rely on contractors to do its basic work, the reliance on contractors by management offices perhaps expain why DOE's reliance on contractors is not routinely questioned.

SECTION V

DOE'S CONFLICT OF INTEREST REVIEW IS NOT EFFECTIVE

The century old body of Federal conflict of interest statutes does not apply to contractors or contractor employees.[57] Similarly, agency codes of conduct, including DOE's, apply to "officials," but not contractors or their employees.[58]

While its contractors and their employees are not covered by civil service laws and rules, DOE does have a system by which it considers potential conflicts in the use of contractors. When applied to contractors, the concept of conflict of interest has been termed "organizational conflict of interest."[59]

A. On paper, DOE's procedures are more than sufficient

DOE generally recognizes that there are a number of forms which potential organizational conflict can take. For example:

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[57] These laws include provisions for criminal penalty. See 18 United States Code Sections 201-208.

[58] The code is contained at volume 10 of the Code of Federal Regulations, Part 1010.

[59] DOE's regulations appear at volume 48 of the Code of Federal Regulations Subpart 909.5 Organizational Conflicts of Interest.

- The potential conflict may stem from the relation between a contractor's private or foreign client(s) and DOE work;
- The potential conflict may stem from simultaneous work for multiple levels of government itself; for example, a contractor may be asked by DOE Headquarters to review a field office which the contractor also staffs; or
- The potential conflict may stem from the relation between present DOE work and future DOE work regarding which the contractor may have an interest.

DOE rules do not preclude the use of a contractor where a potential for conflict, or even actual conflict, is present.[60] The purpose of the rules is to require disclosure. Once disclosure is made the potential for conflict may be determined and limited. Public notice is to be provided whenever DOE determines that the national interest requires use of the contractor notwithstanding the potential conflict involved.

Components of the review process include:

- Contractor disclosure and representation statements. These statements are required of all bidders. These forms do not ask the bidders to judge whether they have potential

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60 Traditionally, the purpose of Federal conflict of interest rules is to protect against the very potential that someone may succumb to temptation and to assure that government has the appearance, as well as the essence, of integrity. Because the focus is on "potential" and "appearance," there may well be debate about the interpretation of a particular set of facts. If the facts are known, those who employ the contractor can take steps to mitigate any potential or appearance, and those to whom the work is presented may be on notice that it may deserve a further check. By the same token, the prospect of disclosure should itself deter entry into arrangements that may be questionable.

conflicts, but to judge whether there are facts relevant to this determination.[61] If any exist, the "disclosure statement" must be filled out.

- A questionnaire which asks "yes" or "no" questions designed to elicit relevant facts from the contractor.
- An "abstract" in which procurement and program officials summarize available information, and certify whether, in "your opinion," the award to the contractor would "result in a possible organizational conflict of interest with respect to the offeror or any of the intended subcontractors or consultants."

If, upon review of all the information, the officials determine that a possible conflict exists, they are required to either disqualify the offeror or avoid the conflicts by the inclusion of "appropriate conditions" in the contract. If it is determined that conflict cannot be avoided but that that the award is in the public interest, "an appropriate written finding and determination shall be published in the Federal Register...prior to the award.[62]

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[61] The representation states that:
"I hereby certify...that, to the best of my knowledge and belief, no facts exist relevant to any past, present or currently planned interest or activity (financial, contractual, or otherwise) which relate to the proposed work; and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair competitive advantage." An unfair competitive advantage does not include the normal flow of benefits under the contract.

[62] See volume 48 of the Code of Federal Regulations at Part 909.570-9. The rule states:

B. There is a pattern of discrepancies between review requirements and reality

In a significant number of cases staff found that statements made in response to DOE's "yes"/"no" questions seemed to be at odds with statements made by a contractor elsewhere. Most strikingly, they often appeared to be at odds with representations made in the "technical proposals" submitted by the contractor, on which decisions to award the contract are substantially based. For example, Question No. 6 of the DOE questionnaire asks:

> 6. Do you (or your organization) have a direct or indirect relationship (financial, organizational, contractual or otherwise) with any business entity which could be affected in any way by the proposed work?
>
> ( ) No.

> "...a finding shall be made by the contracting officer whether possible organizational conflict of interest exists with respect to a particular offeror or whether there is little or no likelihood that such conflicts exist...If the finding indicates that such conflicts exist, then the contracting officer shall:
>
> (1) Disqualify the offeror from the award; or
> (2) Avoid such conflicts by the inclusion of appropriate conditions in the resulting contract; or
> (3) If such conflicts cannot be avoided by an appropriate contract clause, and the Secretary or the Secretary's designee has nevertheless determined that award of the contract to the offeror is in the best interests of the United States, the contract may be awarded. Where such a public interest determination is made, and appropriate written finding and deteminatuion shall be published in the Federal Register and apppropriate clause included in the contract to mitigate the conflict, to the extent possible, prior to the award."

( ) Yes. List the business entity(ies) showing the nature of your relationship and how it would be affected by the proposed work.

In a number of cases contractors checking "no" on the questionnaire simultaneously cited client relationships with private energy concerns as credentials in their technical proposals submitted with their bid. The potential for conflict depends on the work to be performed. With broad statements of work, however, it is difficult to determine what is not relevant to the contract.

DOE procurement officials emphasize their heavy reliance on contractor representations. While they consider conflict review to be important, it is one of many required procedures and contains one of many representations. If the representation appears clearcut, it not likely that many procurement officers will peer behind it.

Relevant facts contained in technical proposals often appear to fall between the cracks in official reviews. DOE procurement staff stated, with some exception, that they were only aware of information disclosed in direct response to conflict of interest questions. They said that they assumed the representations contained elsewhere in proposals were scrutinized by program officials. They rely on those who used the contractor to tell them of relevant facts. Program officials, however, stated that they assumed that the procurement office was fully in charge of the conflict review, and was aware of all relevant data.

In fact, DOE's own forms plainly state that the responsibility is joint, and that DOE requires "careful examination" of, among other things, "relevant portions of the contractor's proposal describing the offeror's work for others..."

Where procurement files show extreme diligence and persistence by procurement officials, the files also show it is not likely to be rewarded when program officials desperately need assistance. Procurement officials who question contract awards often have to battle assertions that they are not experts in the technical field, along with the claim that the contractors services are desperately needed.

The official "abstracts" of the available information often appear to be boilerplate that do not stand up to review. For example:

- Abstracts routinely record that the contractor "will not be involved in the formulation of any regulatory activities and will consequently not cause any direct conflict of interest with any business clients." The very first task in one such case called on the contractor to assist "in the development of up to 20 analyses of regulatory issues..."
- Reviewers appear to assume that if the interests are great enough they do not bear any significance. Thus, in the case of a fossil energy contract where the contractor disclosed long-standing service to private industry and government in coal and synthetic fuels, the official summary declared that "the offeror does not depend on business which could be

affected by DOE actions related to the contract, nor keep any relationship with industries or firms which could impair its objectivity or independence."

When DOE officials find that a potential conflict exists, public notice must be given when the contract is awarded. The 1984 NUS notice, discussed earlier, is the last public notice procurement officials could recollect. The Director of Headquarters procurement told subcommittee staff that DOE's practice had been to give public notice only in cases where DOE did not take any action to mitigate possible conflict. He stated that, upon reexamination of DOE rules and statutes, it is his present view that unless conflict can be completely avoided, notice must be given. He made clear that this view was subject to appropriate further review within the DOE.

SECTION VI

PUBLIC ACCESS TO ITS GOVERNMENT IS RESTRICTED

By law, the public is entitled to routine access to basic information about the federal employees who do the public's work. This information includes, for example, salary data, job descriptions and, at policy-making levels, information on financial and other private interests.[63]

Similar information on contractor employees who perform comparable work is not simply unavailable in routine form; it will be withheld even if requested. Under the "business secret"

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[63]See Volume 10 of the Code of Federal Regulations, Part 1010.

provision of the Freedom of Information Act, it is DOE practice to deny, among other things, the following information:

- The names of contractor employees, even though they may perform tasks similar or identical to the civil service;
- The relevant background of contractors and contractor employees (eg, prior work in related areas), even where they assist in drafting DOE plans and policies;
- Data on the pay of contractor employees (and payments to contractors); and
- Conflict of interest disclosure information, even though contractors may possess interests that cannot be possessed by a civil servant.

DOE officials explain that the above information is subject to withholding under the Freedom of Information Act (FOIA) as a "business secret." For example, a contractor could seek the names of contractor employees to raid his competitor. Whatever the legitimate business reason for the exemption, it is clear that it has not been weighed against the public's right to know who is doing its work.

CONCLUSION

This report is not offered as a definitive analysis of DOE's use of contractors. Rather, it should be used to stimulate public examination and discussion of the important questions that officials at DOE, and other agencies, ask themselves but believe to be beyond public debate. These questions include:

- Does top management have the information and analysis needed to view its workforce as a whole?
- Can top management tell the public, and itself, how many private and official employees are performing basic government tasks?
- Does top management know whether the present official workforce is adequate to assure control of the use of contractors?
- Is the public adequately apprised of the identity and background of those who do its basic work?
- What procedures exist to assure the integrity of official control?
- What steps are required to assure that the country posseses an official workforce capable of managing the private workforce and, by extension,the daily work of government?

If timely public inquiry is not undertaken, the enforcement of current procurement law alone could grind vital DOE activities to a halt. The lead time required for contracts to provide DOE's basic workforce continues to lengthen, and DOE now routinely seeks five year awards in order to avoid the delay caused by competition. Even so, increasingly routine bid protests by losing bidders are threatening DOE's ability to find the workforce needed to conduct its basic work.[64]

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64 In August, the Court of Claims found that DOE failure to comply with conflict of interest requirements was grounds for invalidation of a billion dollar contract needed to proceed with the Yucca Mountain facility.

- 67 -

If the system is not examined, and does not fall under its own weight, Secretary Watkins' successor may be required to make statements about the official capabilities bequeathed him no less dramatic than Secretary Watkins' stark declarations.

APPENDIX A

Contract No.: DE-AC01-86CE30844
Period: 9/01/88 - 9/30/88

DEPUTY ASSISTANT SECRETARY FOR RENEWABLE ENERGY AND SUPPORTING STAFF (RTI)

Task 55

a. Briefings and Presentations

Performed the following support activities under this task item:

- Conducted briefing to DAS/RE, Office and Division Directors on "Characterization of Resources/Reserves" report.
- Developed a draft keynote address and slides for DAS/RE to present at International Renewable Energy Conference.
- Developed draft speech for DAS/RE to Cooperative Ventures R&D meeting, Denver.
- Developed talking points for DAS/RE for SERI Oversight Board luncheon.
- Developed draft hydrogen proceedings paper for DAS/RE for Hydrogen 87 Conference.
- Developed draft evaluation criteria for HTSC Pilot Centers.
- Developed draft presentation for DAS/RE to Energy Awards Banquet.
- Attended and summarized several Congressional Hearings on global warming.
- Attended a three day meeting on HTSC Applications hosted by EPRI in Orlando, Florida.

b. Document Review and Preparation

Performed the following support activities under this task item:

- Completed redraft of "Characterization of Resources/Reserves" report.
- Developed draft white papers on various issues related to global warming/ozone depletion and developed and assembled master notebook.

c. Program Budget Analysis

No activities were performed under this task item during this period.

MONTHLY STATUS REPORT No. 21

REPORT PERIOD: JANUARY 1-31, 1989

TASK NO. 2

SUMMARY OF HOURS AND FUNDS EXPENDED:

	REPORTING PERIOD	CUMULATIVE
HOURS:		
FUNDS:		

LEGEND
PRIMARY: ≥ 50% FTE MONTHLY HOURS
SECONDARY: < 50% FTE MONTHLY HOURS

ACTIVITIES PERFORMED:

ESTIMATED TECH DPMH	ACTIVITY	TECHNICAL STAFF PRIMARY	TECHNICAL STAFF SECONDARY
49	Conducted task management activities.		
311	Supported development of Annual Report to the President on Domestic Safeguards and Security; activities included drafting and editing of text, collection of photographs and other graphics, and coordination of inputs.		
178	Reviewed S&S orders and drafted report on continuity and consistency of the orders.		
87	Supported MSSA review and approval process, including reviews/ evaluations of MSSAs, assistance in the coordination of actions on draft MSSAs (e.g., TTR, SNLA, PMGDP, PDGDP, FB-Line, SPRO, and Purex), and monitoring the development status of MSSAs (including NAST system maintenance)		

MONTHLY PROGRESS REPORT NO. 8

April 1989

TECHNICAL SUPPORT SERVICES TO THE
ASSISTANT SECRETARY FOR DEFENSE PROGRAMS

Contract No. DE-AC01-88DP50066

Contractor: Meridian Corporation
4300 King Street, Suite 400
Alexandria, VA 22302-1508

Period of Performance: January 12, 1988 - January 12, 1991

Project Manager:

Reporting Period: April 1-30, 1989

All technical activities have been performed under the following tasks:

ACTIVITIES PERFORMED:

Task 1A Arms Control Policy Analysis Support

- Revised draft "think piece" on implications for DOE of conventional arms control, building on transition paper previously submitted.
- Revised draft paper analyzing Indian Prime Minister Rajiv Gandhi's June 1988 proposal to the UN Conference on Disarmament on replacing the Nuclear Non-Proliferation Treaty after 1995 and eliminating all nuclear weapons by 2010.
- Prepared white paper on Verification of NATO's CFE Proposal.
- Chaired and attended an OAC - organized meeting on strategic modernization.
- Attended briefing on DOE's START Inspection Readiness Planning Program on April 4.
- Prepared a summary of the status of recent legislative developments of interest to OAC.

- Finalized administrative and security-related arrangements, including draft agenda, in preparation for hosting and attending OAC's Laboratory Advisory Group (LAG) meeting.

Task 2 Arms Control Technical Analysis Support

- Provided technical support and analysis for the Systems and Technology Division (DP-5.1) for the Chemical Weapons Convention Compliance Technology Development Evaluation Panel.
- Incorporated comments by contractor team into policy paper on "Arms Control Proposals for the Cutoff of The Production of Nuclear Materials."
- Continued analysis of the military significance of chemical weapons under a Chemical Weapons Convention.
- Briefed Director OAC and provided paper for possible DOE response to the Domenici Amendment on "Coordination of Verification Policy and Research and Development Activities."

Task 3 Verification Technology Development Analyses

- In preparation for final report on verification technology development plan, completed an internal evaluation of an example set of monitoring mixes and technologies; briefed members of OAC staff on the status of the project, the contents of the final report, and recommendations on how to proceed; concept was approved in principle that a six-month Phase II be conducted, which would focus primarily on a trial run of the evaluation process, administered by PSR and accomplished by several researchers from the DOE labs as well as experts from DOE/HQ.
- Finalized the policy analysis issue paper entitled "Verification of Nuclear Test Limitation Treaties, Policy Paper No. 6"; presented final draft copies to OAC on 18 April.

Task 4 Program Support

- Continued review of the various draft treaty texts, specifically START, chemical and nuclear testing.
- Assisted in the preparation of OAC's FY1989 Program Operating Plan.

B. Fiscal Status

Total Estimated Cost
Total Estimated Hours

Total Expenditures through 7/25/89
Total Expenditures for Month (6/26/89 - 7/25/89)
% Expended

Total Hours Delivered through 7/31/89
Total Hours Delivered for Month
% Delivered

TASK 12 - SUPPORT TO DP-12
Task Duration: June 23, 1988 - August 15, 1989

A. Description of Technical Progress

BDM supported the Office of the Special Assistant to the Secretary for Waste Management. BDM prepared presentation materials and handouts for the Secretary's briefing to the National Press Club on the Five-Year Plan. BDM printed the Five-Year Plan and sets of Activity Data Sheets for the DOE public reading rooms and congressional offices.

BDM supported the Five-Year Plan Task Force. BDM printed 500 copies of the third predecisional draft of the five-year plan and supported its distribution throughout the Department, to other government agencies and to selected reviewers. BDM provided administrative, document control, and activity data base operations and maintenance. BDM assisted with technical support in updating the final draft of the five-year plan for submission to the Secretary for review and approval.

BDM supported start-up of the RDDT&E Five-Year Plan Task Force. BDM assigned a senior manager to support the integration team in preparing the five-year plan. BDM reviewed the technology group reports which will be the basic input used by the integration team to prepare the plan.

BDM incorporated comments on Draft 2 into the Waste Management Operations - Storage module and completed Draft 3 of the Five-Year Plan.

BDM established a set of Storage Activity Data Sheets corresponding to the final data base of the Five-Year Plan.

BDM supported the preparation of responses to comments received on the WIPP Supplemental Environmental Impact Statement.

BDM assisted in preparation of DOE position on NAS WIPP Panel recommendations which, in NAS's opinion, had not been accepted by DOE.

BDM revised overview and certain site summary modules for environmental restoration section of plan.

BDM prepared and revised material for Duffy, Tuck, and Watkins briefings concerning 5-Year Plan.

BDM prepared draft material for input to press release concerning 5-Year Plan.

BDM provided comments based on review of Savannah River Nonreactor operations improvement plan.

BDM revised DWTM annual report to incorporate comments by Director, Hazardous Waste and Remedial Actions Division.

BDM provided analysis of the potential impacts on Defense Waste Management of the amendment to the FY '90 Authorization bill proposed by Congressman Skaggs. The amendment would greatly strengthen the role of the Defense Nuclear Facilities Safety Oversight Board.

BDM provided a draft response to an ES action received by DOE from Senator Phil Gramm regarding an inquiry from one of his commitments on the application of robotics to DOE waste management and environmental restoration problems.

BDM provided a draft briefing on Defense Waste Management to be given to the new Assistant Secretary for Defense Programs designate, Mr. Victor Stello.

BDM coordinated site visits for and accompanied Clyde Frank to Sandia, WIPP, and Rocky Flats.

BDM assisted in preparation of ES correspondence to Representatives Synar and Sharp.

BDM provided input to appointment of Blue Ribbon Panel for WIPP.

BDM participated in meetings with EPA to discuss EPA review of the Test Plan and the revision of 40CFR191.

BDM provided assistance to Ahearn Committee staff in preparation of site visits to WIPP, Sandia, Idaho, and Rocky Flats.

BDM assisted in preparation of WIPP related fact sheets, issue papers, and talking points for the Secretary and obtaining appropriate concurrences.

BDM prepared weekly status reports on WIPP for DP-10 and DP-1.

BDM assisted in developing weekly agenda for WIPP task force.

B. Fiscal Status

Total Estimated Cost
Total Estimated Hours

Total Expenditures through 7/25/89
Total Expenditures for Month (6/26/89 - 7/25/89)
% Expended

Total Hours Delivered through 7/31/89
Total Hours Delivered for Month
% Delivered

TASK 14 - REGULATORY OVERSIGHT SUPPORT
Task Duration: June 23, 1988 - August 15, 1989

A. Description of Technical Progress

BDM assisted the Five-Year Task Force Director in organizing the distribution and review of the Plan by Federal and State government agencies, Indian Tribes, Congress and the public. Also, BDM assisted in developing the procedures for handling comments received in the plan, establishing archives for plan materials, and handling requests for activity data sheets and the Five-Year Plan.

BDM assisted in the preparation of draft testimony and briefing papers for Congressional testimony.

DASMA CONTRACT

Narrative Summary

TASK 3A: Prepared input for replies to six citizen's letters expressing concern about nuclear war, disarmament, and nuclear testing. Reviewed several technical papers and provided recommendations for revision. Subjects included nuclear testing (procedures and operational practices), seismic yield estimating, Nuclear Weapons Council (NWC), and the NWC Standing Committee. Continued efforts towards the consolidation and organization of current working files.

TASK 5B: Administrative effort to support production and coordination of the National Inertial Fusion Five-Year Program Plan was continued. However, personnel changes at mid-month slowed progress in the process of preparing an updated draft of the Inertial Fusion Program Plan Executive Summary. Full support is expected to resume by mid-June 1989.

TASK 7A: Prepared various viewgraphs on aspects of DP Construction for use in the familiarization briefing given to the new DASMA Designee. Began reviewing and updating the Production and Surveillance construction project data sheets for inclusion in the FY-1991 Internal Budget Review (IRB) submission. Began a search of various databases to discover if there currently exists any commercially available project management, project tracking and project reporting software that would increase the headquarter's program manager's ability to track the status of his projects. Reviewed division construction project files going back to 1978 for currency. Updated all one-page Research, Development, and Testing (RD&T) project summaries to incorporate the data from incoming project and major acquisition quarterly reports. Updated a series of LOTUS 123 spreadsheets used to exercise FY-1991 RD&T project budget options. These spreadsheets track the project for total estimated costs and yearly funding for the upcoming fiscal years. Prepared input for new RD&T construction project data sheets currently being incorporated into the DOE internal budget review. This exercise includes extracting data from incoming project justifications and descriptions, plus incorporating cost data. Continued analysis of the quarterly project data reporting system and provided additional suggestions and examples for an improved comprehensive construction project tracking and reporting system.

TASK 12: Effort continued on this task to provide technical and administrative support to the Office of Weapons Production (OWP) in developing and publishing a Weapons Production Handbook. Work resulted in the completion of an additional chapter of the handbook and minor modifications to several others. As of 5/31/89, fifteen chapters of the handbook have been delivered to the task monitor, with seven remaining to be completed. The task is currently scheduled to end on 6/30/89, and as stated in the last report, the task performance period needs to be extended and additional hours added to provide a completed handbook in the form described at the task review on March 8, 1989. This situation has been made even more inflexible by the issuance of Task 20 (assembling a program book for the new DASMA Designee) and the realignment of work priorities toward the new task.

TASK 13A: Continued the input of data concerning classified material holdings in the DASMA vault into the Classified Inventory Management System. These holdings have increased as a result of some of the disposition actions taken by various DASMA Offices in response to the mandated classified document inventory. Made substantial progress on the input of data concerning classified material holdings in the Systems Safety and Operations Division, Office of Weapons Safety and Operations. Coordinated with representatives of the Office of Weapons Production, and the Office of Planning and Project Management regarding the scheduling of assistance for the processing/disposition of classified document holdings in those offices. Continued the input of data for classified material holdings in the Inertial Fusion Division.

TASK 14A: During the month of May 1989, the task was modified to extend the performance period through June 30, 1989. Although effort remained at a low level, assistance was provided in reviewing a joint Albuquerque Operations/Laboratory rewrite of the Draft DASMA Five Year Program Plan.

TASK 15A: Continued work on the preparation of the Annual Report to the President on Nuclear Weapons Surety, 1988. Work included: the preparation of the Nuclear Weapons Council (NWC) Vote Copy of the report; assisting with coordination, via meetings and correspondence, to resolve DOE/DOD issues concerning the text of the report; and the preparation of input to various Point and Information Papers and staffing memoranda associated with processing of the report.

TABLE 2.2-2 TASK 3 DOCUMENT PREPARATION AND REVIEW - SAIC ACTIVITIES HIGHLIGHTS

TASK ELEMENT	OPERATIONS DIVISION	PROJECTS DIVISION	MATERIALS PLANNING DIVISION
1. DRAFTED MATERIAL-PREPARE DRAFT MATERIAL FOR RESPONSE TO PUBLIC AND CONGRESSIONAL INQUIRIES	DRAFTED RESPONSES TO CHERNOBYL AND N-REACTOR FOR PUBLIC AND CONGRESSIONAL INQUIRIES PREPARED DRAFT MATERIAL FOR CONGRESSIONAL OVERSIGHT ALTERNATIVES DRAFTED ANSWERS TO QUESTIONS FROM SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE (REACTOR STATUS, NPR, SCRAP RECOVERY, SUPPLY, DEMAND) DRAFTED COMMENTS FOR DOE ARGUMENTS AGAINST N-REACTOR SHUTDOWN LAWSUIT	RESPONDED TO PUBLIC AND CONGRESSIONAL INQUIRIES CONCERNING NPR COLLECTED MATERIAL FOR THE NRDC/ SNAKE RIVER ALLIANCE FOIA REQUESTS RE: SIS REVIEWED DOE REPORT TO CONGRESS RE: SIS	RESEARCHED INFORMATION FOR NRDC REQUEST FOR DOE Pu INVENTORY DATA COMMENTED ON PROPOSED NASA LEGISLATION RE: Pu-238 COSTS
2. PROJECT MANAGEMENT DOCUMENTATION	INTEGRATED SAFETY EVALUATION PROGRAM (ISEP) PROJECT MANAGEMENT PLAN	NPR AND SIS REVIEWS SUPPORT OF CONCURRENCE PROCESS FOR NSF PROJECT	REVIEWED NATIONAL RESEARCH COUNCIL ENERGY RESEARCH BOARD PROPOSED RESEARCH PROGRAM REVIEWED DEFENSE PROGRAMS REFERENCE BOOK REVIEWED STRATEGIC ISSUES ANALYSIS: FACILITIES DRAFT REPORT, VOLS. 1 AND 2 REVIEWED FEED MATERIALS PRODUCTION CENTER WASTE MANAGEMENT PROGRAM
3. DRAFT PROGRAM PLANS	REVIEWED DRAFT ACTION PLANS FOR INCREASED OVERSIGHT AND ACTION PLAN FOR REVISION OF DOE ORDERS	DRAFTED QUARTERLY AND ANNUAL REPORT TO CONGRESS	DRAFTED LONG-RANGE ES&H PROGRAM PLAN
4. FACILITY DESIGN DOCUMENTATION	REVIEWED N-REACTOR DESIGN ALTERNATIVES FOR ECCS WATER STORAGE	REVIEWED FERNALD DECONTAMINATION FACILITY DESIGN PREPARED ONMP COMMENTS ON DOE CRITERIA	DRAFTED SIA/P FACILITY SITING CRITERIA
5. ENGINEERING AND PHYSICS ANALYSES	REVIEWED ENGINEERING ANALYSES OF SOURCE INTENSITIES FOR SIS SHIELDING THERMAL HYDRAULICS COMPUTER CODE ANALYSIS FOR SRP REACTOR OPERATING LIMITS	DRAFTED REVIEW PAPER AVLIS/MLIS/PSP CHEMICAL EXCHANGE TECHNOLOGY NPR TECHNOLOGY ASSESSMENTS	
6. ENVIRONMENTAL REPORTS	REVIEWED SAVANNAH RIVER RESPONSE TO ENVIRONMENTAL SURVEY	FERNALD ENVIRONMENTAL ASSESSMENTS FOR NEW PROJECTS SIS ENVIRONMENTAL IMPACT STATEMENT REVIEW	
7. SAFETY REPORTS	PREPARED ANALYSIS OF IMPACT OF NEUTRON QUALITY FACTOR CHANGE	PREPARED NPR SAFETY CROSS CUT REPORT REVIEWED SRP CONFINEMENT SPRAY SYSTEM MODIFICATIONS	
8. BUDGET REPORTS	REVIEWED THE UHC PLANS FOR N-REACTOR SAFETY UPGRADES	REVIEWED SCHEDULE A1 FOR MAJOR PROJECTS	PREPARED BUDGET STRATEGY ALTERNATIVES FOR SIA/P REVIEWED DRAFT OF BUDGET TESTIMONY TO CONGRESS
9. NUCLEAR MATERIALS SUPPLY ANALYSIS	PREPARED Pu DEMAND-SUPPLY ANALYSIS SUPPORTING N-REACTOR OPERATIONS	REVIEWED SRP REPORTS ON AVAILABILITY OF Pu FOR SIS PROCESSING	ASSISTED IN PREPARATION OF SIA/P COST DATA BASE PERFORMED SEVERAL HUNDRED NUCLEAR MATERIAL SUPPLY-DEMAND ANALYSES REVIEWED DUPONT STUDIES RELATING TO NB PRODUCTION ESTIMATES

ABSTRACT

Task 5, Systems Development and Maintenance: provided support for the production of PADS, FIS, and MURS reports showing status of FE support contracts; continued the feasibility study of Local Area Networks (LAN) to resolve problems of FE information coordination; modified the travel data base as requested by DOE, and updated documentation; continued to evaluate documentation of the Contract Data Base; updated the FE-wide SPITS system with METC, PETC, and BPO information along with the marked up hard copy fact sheets; verified the fact sheet budget data against the President's budget; verified the fact sheet contract information against the contract data base to assure accuracy; initiated long-range systems planning review; continued support for ad hoc requests for mainframe connection (TSO, JCL) and other assistance in support of the task; provided support regarding MURS revisions; provided systems support for object class programs; set up FTE object class factors, program activity bottom lines, calculated average salaries, prepared initial object class calculation and reports, edited and printed object class data.

Task 8, Petroleum Reserves Budget Support: completed end-of-year updates to SPR Crosscut System; completed FY 88 end-of-year AFP closing and "rolled-over" final carryover and PY dollar values to update current FY89 figures; completed data entry to SPR and NPR AFP Tracking Systems for October through December 1988 (FY89); began OPFM file system and document review.

Task 12, Alaskan Natural Gas Transportation System: reviewed state of Alaska and DOI right-of-way grants for the TAGS project; met with Alaska Department of Natural Resources Northern Direction to discuss the status of TAGS grant and related project issues; also met with Alaska, Fish and Game habitat direction for Northern Region;- reference: status of mitigation activities in Prudoe Bay; discussed project with BLM and NWA and recent developments.

Task 13, Administrative Support to ICTAP: attended and coordinated support for ICTAP meeting on November 30-December 1, 1988 in New Orleans, LA; revised technology inventory for the Working Group on Technology Status Review and Evaluation, based on full panel meeting input; prepared and delivered transcript of the first day of proceedings at ICTAP full panel meeting: continued efforts to secure transcript of second day of proceedings from transcription service; reviewed charges and dispatched payment to hotel, A/V service, bus company for services associated with full Panel meeting.

Task 14, FE Communications Staff Support: updated and backed up TELENEWS weekly and assisted new users; provided continuing computer applications assistance; provided continuing technical papers and public information support, including; speech preparation, fact sheet updates, briefing preparation; reviewed, processed and tracked conference and contractor/ per meeting requests.

Task 18, Management and Financial Analysis: continued modifying/enhancing the Contract Task Assignment Status System (CTASS) and reviewing system documentation; assisted in updating various contract analysis for FE review and action; prepared analysis of DAS Managed Funds comparing the Key Activity Summary versus the December 1, 1988 FY 89 PEP; prepared an Active Fossil Energy Contracts Listing for the State of Wyoming; assisted in preparing Contract Mortgage Listing for FY 1990; provided FE Personnel Tracking System support/maintenance as required; generated FY 1989 FIS reports for headquarters and field offices; designed a program using an S2K reportwriter to generate a Type Award Instrument codes listing; prepared the NPR Integrated Contractor's Analysis for Bechtel and Lawrence- Allison.

Task 19, Acquisition Support: distributed PEP's; provided preprocurement support to HQ Program Offices; processed 29 PR's, Training Packages, and Direct Authorizations, prepared 215 Change Sheets, processed 23 Task Assignments, processed 13 Program Guidance Letters, and processed 4 Work Authorizations; reviewed PEP weekly for accuracy; provided ad hoc support to various program personnel; reconciled BMIS to FCS; maintained PFA/FWP Book, continued to process FY 1989 baseline PFAs and direct FWP's; provided information for DAS 2% report; prepared draft of first FY 1989 Baseline letter.

Task 20, Administrative Support: prepared and distributed monthly Foreign Travel Report; prepared and distributed weekly Manpower Summary Reports; prepared and distributed monthly Staffing Status Report; prepared and distributed FTE Usage Projection Reports; assisted in the Tracking System for Personnel Actions; assisted in the Tracking System for within grades; assisted in coordination of telephone toll certification slips; reviewed domestic and foreign travel vouchers; reviewed Fossil Energy Security Packages; assisted in preparation of foreign travel authorizations; assisted in distribution of FE weekly activity reports; assisted in the coordination of proposed DOE orders; maintained Management Information Center; prepared required contract reporting documents; assisted in preparation for the foreign travel exception request report, assisted in preparing awards and performance rating reports;assisted in tracking of TSP and health plans; assisted in the tracking of performance appraisals and ratings; prepared monthly contract reports; assisted in preparation of monthly Fossil Energy telephone listing.

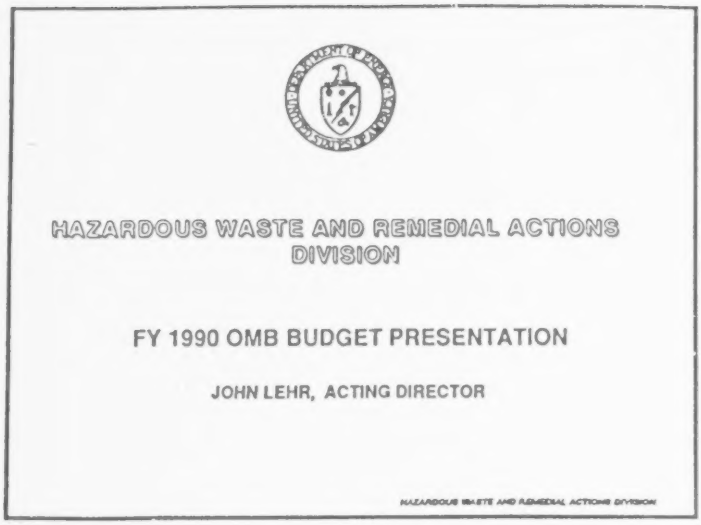
Task 21, Budget Formulation: updated FY 1989 Question and Answer Books, and the FY 1989 Questions Book; provided reproduction and coordination support as required; continued work effort on FY 1989-1990 Fossil Energy Fact Book, continued to automate the FE R&D Q&A system; compiled and collated FY 1990 Congressional Budget books and contents.

Task 22, Word Processing Support: provided word processing support as required.

Task 24, Clean Coal Technology Budget Support: no activity to report.

APPENDIX B

MASTER
Primaries



ANNUAL REPORT TO CONGRESS

UNITED STATES DEPARTMENT OF ENERGY
1986

VOLUME 2 of 3
(SPR)

FOSSIL ENERGY

CONGRESSIONAL BUDGET
FY 1989

STRATEGIC PETROLEUM RESERVE

Assistant Secretary for Fossil Energy
U.S. Department of Energy

February 1988

UNITED STATES DEPARTMENT OF ENERGY
NUCLEAR WEAPONS COMPLEX
MODERNIZATION REPORT

Report to the Congress
by the
President

DECEMBER 1988

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT CONFORMANCE REVIEW

SAVANNAH RIVER OPERATIONS OFFICE (SR)

AUGUST 24, 1989

U.S. DEPARTMENT OF ENERGY
CONTRACT # DE-AC01-87MA00357

September 28, 1989

BOOZ·ALLEN & HAMILTON INC.

PSR Report 1992

NONPROLIFERATION TREATY REVIEW CONFERENCE IV:

SELECTED COUNTRIES' VIEWS, ARMS CONTROL ISSUES

BRIEFING BOOK

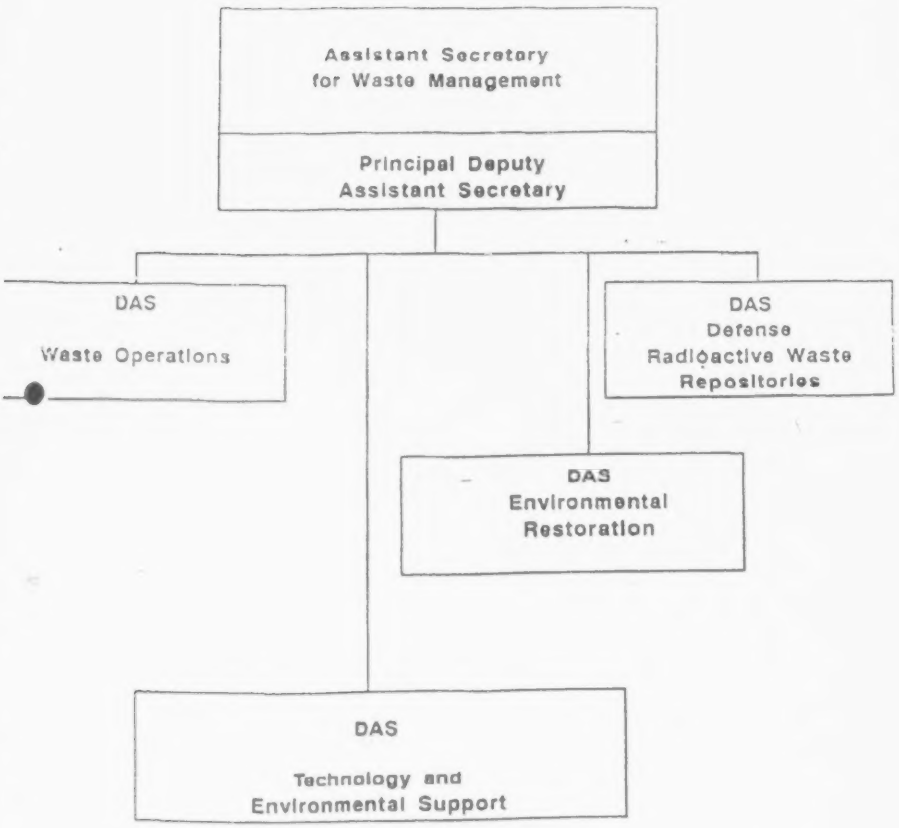
K. J. Lifton

SEPTEMBER 1989

Draft Final Report
Contract DE-AC01-87DP50060

Submitted to
U.S. Department of Energy
DP-5.2
1000 Independence Avenue, S.W.
Washington, D.C. 20585

PROPOSED WASTE MANAGEMENT ORGANIZATION
(with separate OCRWM) 5/7/89



D R A F T 12/27/88

REGULATORY OVERSIGHT COORDINATION PLAN

I. PURPOSE

The purpose of this plan is to document the mechanism by which the Office of Defense Waste and Transportation Management (DWTM) will provide assurance that Defense Programs waste management and transportation activities meet applicable regulatory and other requirements within budgeted funding and that responses to Federal regulations are consistent and comparable in approach at all sites. This mechanism will include emphasis on DWTM's need to anticipate regulatory actions impacting DWTM programs and the need for DWTM participation in formulation of regulations and standards.

II. BACKGROUND

Over the past several years, there has been a substantial increase in the number and complexity of environmental regulations which necessitate specific actions at Department of Energy (DOE) facilities to assure compliance (See Figure 1).

Historically, the DOE has been self-regulating under the Atomic Energy Act (AEA) for wastes containing radioactivity. However, the May 1, 1987 finalization of the DOE By-Product Rule recognized that DOE is subject to regulation under the Resource Conservation and Recovery Act (RCRA) for materials designated as hazardous under RCRA. Mixed radioactive and hazardous waste therefore became subject to regulation under both RCRA and the AEA. Congress has made clear its intent that Federal facilities are subject to all environmental requirements imposed on commercial entities, including the RCRA requirements.

The Secretary of Energy has for several years had a formal regulatory policy, most recently reaffirmed in the Policy section of Order DOE 5400.1 issued November 9, 1988 that the Department will conduct its operations in compliance with the letter and spirit of applicable environmental statutes, regulations and standards. (Major environmental regulations include RCRA and its amendments; the Comprehensive Environmental Response, Compensations, and Liability Act (CERCLA) and its amendments; the Toxic Substances Control Act (TSCA); the Clean Water Act; and, the Clean Air Act.)

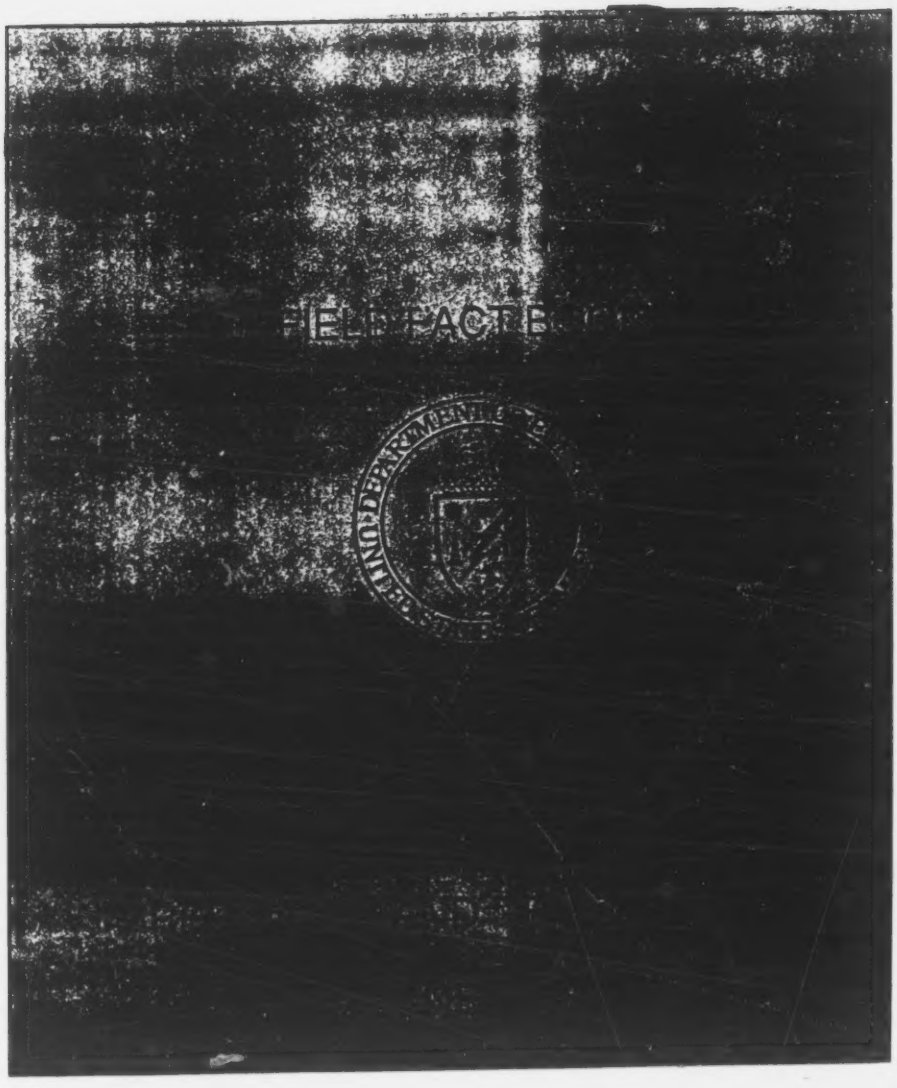
The change from DOE self-regulation for waste treatment, storage, and disposal to compliance with regulations established outside the DOE results in a loss of regulatory initiative by DOE. Furthermore, the complexity of the newer regulations makes it difficult to independently interpret the most appropriate actions to meet requirements, and the need to work through the Office of Environment, Safety and Health (EH) for formal contact with the Environmental Protection Agency (EPA) creates a difficult coordination situation.

25-843 - 90 - 6

MISSION STATEMENT

DEFENSE WASTE AND TRANSPORTATION MANAGEMENT PROGRAM

The Defense Waste and Transportation Management (DWTM) mission is to assure unimpeded production of nuclear materials for nuclear weapons through the proper handling, transport, storage and disposal of all wastes produced through nuclear materials production efforts; this mission includes the cleanup of previously contaminated sites that are no longer a part of the active production effort. DWTM's goal is to transition from interim storage to appropriate permanent disposal of all categories of radioactive and hazardous wastes.



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STATEMENT OF WORK

Support Services for the Office of the Assistant Secretary for Defense Programs (ASDP).

A. BACKGROUND

The Assistant Secretary for Defense Programs has responsibility for overall policy, planning, and management of defense program components and programs and for providing programmatic direction, coordination, and evaluation of multiple, complex functions and activities. Among these functions and activities are the responsibility for research, development, testing, production, and delivery of nuclear weapons to the Department of Defense: assistance in the DOE program to conduct research, development and demonstration of the capability of inertial confinement fusion to meet national security and energy development goals; the management of the DOE nuclear materials program, including planning for and scheduling the operation of facilities in preparing fuels for production reactors, chemical reprocessing plants and supporting facilities; responsibility for defense-related nuclear waste handling, treatment, storage, utilization, and safe disposal; responsibility for international security affairs as they relate to National Security Council actions, nuclear weapon test ban treaty verification, and national security activities including export control, arms control, nonproliferation, and negotiation of mutual defense agreements of cooperation; and responsibility for research, development, testing, and evaluation of safeguards systems.

Several organizational units within ASDP are responsible for supporting different aspects of the Defense Programs mission. The contract will be under the program direction of the Director, Office of Plans and Resource Management.

B. OBJECTIVE

The objective of the proposed contract is to secure specialized technical and management support assistance in the cost-effective, safe, and efficient operation of the defense programs.

The support services will be provided largely at DOE Headquarters but may require visits to the field locations where nuclear materials and nuclear weapons activities are accomplished. The tasks entail working in restricted areas and with classified data and information, including Restricted Data, which must be controlled pursuant to DOE security procedures. The personnel performing on the proposed contract will be required to possess or obtain DOE "Q" security Secret Restricted Data clearances for Statement of Work areas 1, 2 and one person cleared for area 5 and DOE "Q" non-sensitive clearances for the remaining work area of 5 plus 3 and 4. Thorough familiarity with DOE security requirements and procedures is mandatory.

The contractor will perform tasks defined in the Statement of Work as ordered by the contracting officer in accordance with the provisions of the contract clause entitled "Ordering Procedures."

The work to be performed will not require government direction or supervision. Individually written task orders will outline control of the assignment of work to the contractor. The contractor will have full responsibility for accomplishing the work and submitting deliverables as specified in the task orders. The Government shall consider the contractor's work, including any work having policy or management implications, to be of purely advisory nature and shall be entirely free to accept, reject, or modify the results of all work.

C. The contractor shall provide all the technical and administrative personnel, equipment, materials, supplies, facilities, and travel necessary to assist ASDP task managers in the following areas and as delineated in specific task orders to be issued:

1. Strategic Planning and Analyses

Provide recommendations for structure of and methods for conducting the process of issue identification, study, review, disposition, tracking and coordination. Participate in task force meetings, as appropriate, develop technical materials and papers, identify and recommend analytical techniques for use in issue analysis. Provide recommendations for briefing topics, observations on draft issue papers and advice on special problems. Develop forecasts, trend analyses and assessments of potential impact of such considerations as the extension of state and local regulations and ordinances to Federal activities, implications of the Federal debt, cycles in defense spending, international trade and national security. Provide progress and status reports on task force activities and special studies. Develop, propose and maintain schedules of task force and study activities.

2. Program Planning and Analyses

Conduct analyses of the planning process and provide recommendations for improvement. Analyze program analysis reports and provide observations and recommendations. Develop and propose technical sections for final reports and issue papers.

3. Policy Assessment and Analyses

Conduct analyses and/or studies and provide recommendations as to response, actions to be taken and/or impact on DP operations of policy issues such as technology transfer, patent review process and environment, safety and health. Provide recommendations on briefing topics and methods of presentation for and to senior DP management. Review and provide observations and recommendations on technical aspects of proposed/draft legislative issues and papers. Propose and maintain tracking systems for use in providing status on legislative activities.

4. Technical Assessment and Analyses

Assist in development and maintenance of DP's environment, safety and health long-range plans. Analyze field office programs and provide observations and recommendations. Consolidate data from Operations Offices and Headquarters for DP review in order to meet the requirements of the environment, safety, and health crosscut budget requirement. Conduct analyses of draft and final environment, safety, and health requirements and provide assessments as to impact on DP missions and recommendations. Assess DP environment, safety, and health line item projects and provide prioritization recommendations. Provide technical advice and assistance in tracking and coordination of DP environment, safety, and health activities.

5. Personnel Management Analyses and Management Support Services

Services include assisting in the preparation in drafting position descriptions and performance standards for DOE review and approval; maintaining correspondence control; and preparation in draft form of technical documents and other written materials. Typically, such written materials will involve, but are not limited to, strategic planning and analysis reports; draft program plans; ES&H long-range plans and reports; and technical, personnel, and managerial reports. The contractor will provide word processing services as required to support this activity.

Maintaining correspondence control will include documenting the location and individual for all existing key documents and providing a system for its update on a continuing basis.

The work described herein illustrates the various types of work or general types of tasks anticipated to be performed under this contract.

APPENDIX C-2

TASK 3.2A

LEGISLATIVE TRACKING AND INFORMATION MANAGEMENT

The contractor will provide assistance to the Policy and Evaluation Division (DP-522) in the coordination and integration of legislative issues and congressionally related activities. Support in this effort will include:

1. Analysis of bills, reports, and interagency proposals.

2. Collection and analysis of background documentation to support DP staff response to requests for information to support agency response to congressional and/or outside inquiries.

3. Assistance in the collection, preparation, or editing of briefing materials.

4. Maintain a legislative "clearinghouse" capability for DP officials that includes congressional hearing files (e.g., statements, transcripts, answers to pre- and post-hearing questions, correspondence, briefing books or materials), bills, reports, and related documents.

5. Assistance in bill tracking activities, including the distribution of bills and reports for evaluation, the integration and resolution of issues or concerns, or the drafting of impact statements and analyses.

6. Assistance in the preparation of a summary report which identifies legislation enacted by the 100th Congress affecting DP operations.

7. Maintain the minutes of meetings related to these staff support activities and a log of action items arising from these meetings.

Per his request, SMS will deliver a review copy of the "Executing DP Offices" report to Mr. Sprankle, so that he can review and/or circulate the report for any change in the current data. The plan is to deliver the review copy to Mr. Sprankle by February 15, 1989, or earlier, so that his changes can be received at SMS March 1. As scheduled, the revised report and complete deliverable will be given to Mr. Sprankle on or before March 15, 1989.

BDM, under subcontract to SMS, provided programming support in dBase III, which involved setting up the data entry tables and customizing the report formats in five different layouts. During January, BDM personnel continued to facilitate data input, refine the report formats to SMS specifications, troubleshoot anomalies in the data base itself, and consolidate and organize information to go into the data base.

Task 3.2 - Legislative Tracking and Information Management

On Task 3.2, SMS and its subcontractor BDM assisted DP-522 with developing materials for DOE hearings. Specifically, SMS and BDM personnel assisted in collecting, compiling, and integrating potential questions and answers for ADM Watkins' confirmation hearings. Similarly, SMS assisted in preparing Mr. Wade's testimony for presentation before Senator Glenn. BDM also prepared memoranda identifying DP-relevant legislative issues culled from major DOE issues before the 100th congress. These issues were prioritized for presentation to the 101st congress.

Task 3.3 - Action Coordination and Congressional Reports Tracking System (ACCRTS)

SMS continued to receive the ACCRTS output from the DOE Executive Secretariat. In addition, SMS completed a short status report on each action assigned to Defense Programs, and delivered the reports to the Task Monitor for signature

Task 3.4 - National Academy of Sciences (NAS) - Data Accumulation and Processing

SMS is continuing to identify and cross-check all NAS requests for documents and DOE responses to those requests. There appears to be some problem with NAS following the procedures arranged between NAS and DP-2.2. Frequently, the requests are not routed through DP-2.2 to the Operations Offices; however, DP-2.2 is attempting to rectify the situation. Until this is resolved, SMS is coordinating directly with the Operations Offices to ensure DP-2.2's data base is complete. In February SMS expects to complete cross-checking the data bases from Richland and Oak Ridge.

orders review task. John Eversmeyer, working on the dBase III portion of this project at SMS Germantown, revised the database sorting criteria and report formats, as directed. He also provided instructions on the use of the database. In order to allow SMS to track changes to DOE Orders, Mr. Eversmeyer created an in-house maintenance database, and upon completion of these tasks, he reviewed the code logic with SMS.

Task 3.2 - Legislative Tracking and Information Management

SMS and BDM personnel provided staff services to Ken Sprankle (DOE) in the Forrestal building. The referenced personnel prepared testimony, talking points, briefing books and materials, and viewgraphs for Secretary Watkins' April 3, 1989, and Troy Wade's April 6, 1989 hearings. [redacted] (BDM) prepared a draft statement for Secretary Watkins' use in his appearance (April 3) before the House Armed Services Committee. [redacted] also began development of the DP-52 legislative tracking system. In addition, SMS and BDM reviewed testimony from the Justice Department and EPA, along with draft legislation from Senator Glenn for whom SMS also conducted an impact analysis. In addition, the Company reviewed and provided comments on Congressional Records, the Federal Nuclear Facilities Environmental Response Fund, and the Federal Nuclear Facilities Compliance Acts. SMS also provided a written analysis on the Solid Waste Disposal Amendments Act (HR 1056).

Task 3.3 - Action Coordination and Congressional Reports Tracking System (ACCRTS)

SMS completed all status reports for DP-52 on time. Activities included contacting DOE personnel responsible for action items, determining status, entering data into ACCRTS, along with printing and distributing reports.

Task 3.4 - National Academy of Sciences (NAS) - Data Documentation and Processing

Very little time was spent on this task in April. SMS has completed all input to its database regarding NAS requests for DOE documents and material. A printout of the complete database and a list of requests not filled by the DOE field sites were delivered to DP-2.2 in March 1989. SMS is waiting for DP-2.2 to distribute this list to the appropriate field sites. As the sites begin filling the requests, and notifying DP-2.2, SMS will begin updating the database.

include the referenced orders is a good way to begin the Alert System because SMS has been told that work has not begun on a new DOE 0000.2A index.

Beginning with such a detailed list required SMS' securing a complete and accurate list of orders not in the Index. SMS has received the list, and is collecting the information (missing orders) needed to initiate the Alert System. The Task Leader will be working with Mr. Zeoli on the desired method of distributing the alerts within DP.

Task 3.2 - Legislative Tracking and Information Management

SMS and BDM supported DP-522 by performing the following actions:

- Dispatched post hearing questions for several House and Senate Committee Hearings

- Collected answers and integrated submissions into a final product for DP 522. Examples of this effort included: comments from the post hearing transcript on Inertial Continement Fusion Hearing of April 6, 1989; Congressman Kyle's questions from the April 26, 1989, House Armed Services Committee Hearing; questions from the Science, Space, and Technology Committee Hearing of April 27, 1989; and questions from the Sharp, Sassa, Glenn, Exon, and Gorton Hearings.

- Prepared (integrated, duplicated, and quality assured) numerous briefing books that were used by DP Management in House and Senate Hearings. This effort included preparation of Troy Wade's statement for Admiral Watkins testimony before the House Armed Services Committee Hearing on May 17, 1989.

- Performed a section-by-section analysis of HR 1467, Waste Reduction Act; HR 1836, Defense Authorization Transcript; and HR 101, The Civilian Authorization Bill regarding Technology Transfer.

- Reviewed and distributed various transcripts, bills, and issue papers for comment by various DP offices. Each item had a quick response turn-a-round time.

- Integrated responses on the DOE Nuclear Safety and Environmental Act.
- Developed a point-by-point refute on the Plutonium Control Act, and prepared a report on the GSA Draft Bill on Maintenance Procurement Contractors.
- Finalized a review of the Criminal Amendments Bill.
- Assisted with graphics support for the DOE/DOD Stockpile Commitments Vugraph and analyzed a legislate print-out on new legislation from the General Counsel's Office for items pertinent to DP.
- Reviewed daily for relevant information the Congressional Records and Federal Registers.

Task 3.3 - Action Coordination and Congressional Reports Tracking System (ACCRTS)

SMS completed all status reports on time. Activities included contacting DOE personnel responsible for developing solutions to action items, determining status, entering data, and printing and distributing reports. Recent increased emphasis within DOE to meet commitments has resulted in requests by DOE to run out-of-cycle updates of the ACCRTS reports. These short notice requests have all been met by the SMS Task Leader, Ms. Plummer.

Task 3.4 - National Academy of Sciences (NAS) - Data Documentation and Processing

Very little time was spent on this task in May. Further SMS action is dependent upon DOE's distribution to the field of a list of unfilled NAS requests. It is SMS' understanding that all NAS requests were to be filled during the spring of 1989; therefore, SMS is concerned that these data are not being supplied to NAS in a timely manner.

Task 4.2 - Environmental Safety and Health Document Review (ES&H)

SMS and LAI supported DP-522 by continuing the review of DOE's Schedule 44. These forms show the safety and health budget requests from specific Operations Offices. The Schedule 44's are in the process of being ranked and prioritized, using the Office of the Assistant Secretary for Defense

- Analyzed a Legislate print-out on new legislation from the General Council's Office for items pertinent to DP. Reviewed the Congressional Records and Federal Registers daily for relevant information.

- Maintained an "Outstanding Items" report for DP-522 on critical issues. This report is used as a management tool. Attended the House Spratt Panel Hearing on behalf of DP-522, on June 6, 1989.

Task 3.3 - Action Coordination and Congressional Reports Tracking System (ACCRTS)

SMS' activities this month included only the routine updating of the action item data base and the printing and delivering of reports to DOE. All status reports were completed on time with no unusual activities to report.

Task 3.4 - National Academy of Sciences (NAS) - Data Documentation and Processing

No activity during this period.

Task 4.2 - Environmental Safety and Health Document Review (ES&H)

SMS provided support to DP by conducting a prioritization effort from an ES&H standpoint of construction line-item projects (Schedule 44's). Two separate but related reports were provided DP. The first report prioritized ten Schedule 44's initially provided to SMS by DP. After the initial submission, DP provided an additional four Schedule 44's. A second report prioritized the fourteen Schedule 44's.

Task 4.3 - Technical Safety Appraisal Evaluations

Updating of the original report on technical safety appraisal evaluation was initiated by SMS due to the recent issuance of technical safety appraisal reports on both new and follow-up appraisals. This portion of the SMS TSA evaluation effort will focus on prioritization of the TSA concerns, identification of those concerns considered closed by the operation offices and those considered closed by the contractor/laboratories.

4.4 - DOE Environment and Waste Management Support

SMS and BDM supported S-1 on this task by assisting the Office of the Special Assistant to the Secretary for Coordination of DOE Environment and Waste Management in the set-up of this office and by coordinating,

assisting, integrating, and performing various support activities. Three new SMS employees are supporting this task. BDM, is the task leader for this effort.

Mr. provided task leadership and technical support services for preparing DP staff testimony, issue papers, and other pertinent material. Some of the items prepared during this reporting period are presented below.

The SMS team drafted testimony inserts describing the 5-year planning initiative for the Secretary's June 15th appearance before the Senate Appropriations Committee and the Acting ASNE's June 6th appearance before the Senate Appropriations Subcommittee on Energy and Water Development; and prepared testimony and briefing materials for June 6th appearance of L. Duffy before the Senate Committee on Armed Forces. Reviewed/edited June 12th EPA and DP-10 testimony on WIPP; and reviewed/edited program review slides for briefing of the Secretary on the Five-Year Plan progress and issues.

Drafted transcript insert on DOE funding of State CERCLA/RCRA oversight costs and edited transcripts from several hearings. Completed speech for presentation by L. Duffy on June 22nd to the Inter-mountain Region Associated Press editors and publishers on DOE issues affecting the region. Prepared talking points for S-1 on DOE waste group projects and on establishing an outside review group to assess the WIPP operational test plan and responded to the Office of Policy Coordination questions concerning proposed DOE response to GAO inquiry on waste packaging.

5.1 - Administrative Support (Travel and MURS)

Travel

SMS [redacted] Travel Office by processing travel requests, closing vouchers, [redacted] travel records, and entering data, as appropriate and required. This month, the SMS Task Leader also handled some field travel, as requested. This additional activity required specific analysis of the transaction and documentation of the same.

Permanent change of station (PCS) activity is slow because of the DOE hiring freeze; however, the volume is expected to increase when the freeze is lifted.

[redacted] reporting period.

BEST AVAILABLE COPY

APPENDIX C-3

88DP00139

ES.

WANTED

Systematic Management Services, Inc., (SMS), a rapidly expanding national company, has two positions, one entry level, one with 5+ years experience, immediately open in its Washington, DC office in L'Enfant Plaza for legislative analysts.

Duties for these positions include assisting the Department of Energy with legislative analysis, document coordination, testimony preparation and review, floor statement development and preparation of position papers.

Candidates must be degreed in political science/international affairs. Knowledge of the legislative process is required. US citizenship and ability to obtain a security clearance also required. Knowledge of DOE operations as well as WordPerfect desirable.

SMS provides a comprehensive benefits package including life and health care coverage, 401k plan and much, much more.

Interested candidates send resume and salary history to:

Systematic Management Services, Inc.
Human Resources Department
20201 Century Blvd.
Germantown, MD 20874

An Equal Opportunity Employer M/F/H/V

"Controlling The Future"

1/18/89

APPENDIX C-4

MA-45

SMS Advertisement for Legislative Analysts

David B. LeClaire, DP-54

The attached classified advertisement from The Washington Post published on September 17, 1989, was brought to my attention by an employee of HQ Procurement Operations. While the advertisement does not identify the cognizant DOE contract requiring legislative analysis, testimony preparation and review, floor statement development and preparation of position papers, the recent experience involving R&D Associates immediately came to mind.

As you know, DOE does not control independent contractor's decisions to publicly advertise for human resources, nor does it approve the advertisement itself. I have reviewed the attached statement of work of DOE contract DE-AC01-88DP00139 which contains scope for policy assessment and analysis. In my review of this scope of work, I do not believe that preparation of congressional testimony, floor statement development, and preparation of DOE position papers on legislative issues is authorized. I have not, however, attempted to review the task assignments to this contract, nor possible task assignments in preparation.

It is requested that your office immediately review all tasks in preparation to be issued or issued to Systemmatic Management Services, Inc., to ascertain whether or not any such legislative analysis is contemplated or in process. Based upon experience in FY-88 and FY-89, any such work must be approved by both the Head of the Contracting Activity and the Acting Assistant Secretary for Defense Programs. May I be informed of the results of your review by September 30, 1989.

/s/
David G. Newman
Director
Office of Procurement Operations

Attachments

cc: MA-452

United States Gover... Department of Energy

memorandum

DATE SEP 29 1989

APPENDIX C-5

REPLY TO ATTN OF DP-542.1 (J. Beiriger)

SUBJECT Systematic Management Services, Inc., (SMS) Advertisement for Legislative Analysts

TO David G. Newman, Director, Office of Procurement Operations

In response to your memorandum of September 18, 1989, concerning the subject matter, the following is offered. After a thorough review of all existing and proposed Task Assignments under the SMS contract, numbered DE-AC01-88DP00139, we are confident that no SMS efforts involve the preparation of congressional testimony, floor statement development, or preparation of Department of Energy (DOE) position papers on legislative issues. We are in agreement with you that SMS is not authorized to perform these services under its DOE contract.

Additionally, in discussing the referenced announcement with SMS, it was agreed that the announcement is loosely worded and could have been more precise.

The Task Assignment under which SMS performs legislative tracking and information management duties is Task 3.2, issued on August 15, 1988, with a completion date of May 11, 1990. The scope of this task calls for SMS to assist DOE with legislative matters as indicated in the advertisement. It is our belief that the contractor did not intend the job advertisement to include the creation of legislative testimony, floor statements, or position papers. This "assistance" takes the form of technical writing or editing, data base maintenance for DOE concerning relevant legislation, summarization of legislation or proposed bills, and support for DOE presentations and briefings. These types of assistance are what the contractor defines as "legislative analysis." The contractor is not preparing congressional testimony, developing floor statements, or creating DOE position papers. Neither is the contractor dealing with Congressmen, giving briefings to third parties, or anything similar.

The contractor was advised shortly after contract award that they could not represent the Department under any circumstances, nor could they develop final testimony, floor statements, position papers, etc. To our knowledge, SMS has operated accordingly.

We, too, are sensitive to the events and repercussions resulting from the R&D Associates during the recent past and with the continued coordination between our offices, these issues will be appropriately contained.

I sincerely appreciate your interest and concern in this matter. Please contact me, or my staff, if you require additional information.

David B. Leclaire, Director
Office of Management Support
Defense Programs

cc: K. Sprankle, DP-52

APPENDIX C-6

DP-522 ACTION ITEMS
DAILY LOG

DP-522 ACTION ITEMS

/ED	SUBJECT/DATE	DP OFFICE(S) SENT TO	DATE/TIME DUE DP-522	DATE/TIME DUE GC	LEAD	STATUS
	Dingell 7/20 hearing QA's "Safeguard & Security" Declassified	McCullum, 4 Baldree, 20 Ten Eyck, 34 DP-53,54 MA-5	8/25	ES 8/31		Transcripts & Insert to GC 9/1 QA's to DP-1/S-3 To Safeguard & Sec. 9/15
	DOJ HR 2372 Radiation Exposure Compensation Act	Billups, 2.2 Morris, 10 Baldree, 20	9/14 COB	9/18 COB		Out for comments
	5/17 Senate Armed Serv Committee QA's Nunn Committee	Lightner, 7				To DP-1 for Signature 9/12 (pass back from 9/5)
	DOJ Draft Bill Gov't Contractor Liability Reform Act of 1989	Richardson, 8 Morris, 10 Baldree, 20	9/7 COB	9/8 2 pm		Delivered to GC 9/9
	Meinhart Letter To Conferees on DOD-Endew, SIS, LANL Incineration	----	-----	------		Complete to DP-1 9/5/89
	Hearing Package on S972 & 1304 Re: Nuclear Facilities--Senate Energy & Natural Res. (Glenn Committee)	-----	-----	------		Hearing date pending

Subcommittee Staff note: The names under "Lead" have been deleted. In all instances save "Dingell 7/20 hearing" they are a contractor employee or employees. In that instance the column identifies one DOE official and one contractor employee.

DP-522 ACTION ITEMS

ED	SUBJECT/DATE	DP OFFICE(S) SENT TO	DATE/TIME DUE DP-522	DATE/TIME DUE GC	LEAD	STATUS
	DOE Letter to State Attorney's General Association on HR 1056 Enforcement of Environ. Laws at Federal Facil.	Morris, 10 Baldree, 20 Billups, 2.2 Pflaum, 30	9/5 COB	9/6 COB		To GC w/comments 9/7
	Stello Book/Issue Paper	------	------	-------		Pending action
	Watkins Transcripts from 8/2/89 hearing on DOE's Radiation Health Effects & Working Conditions at DOE Sites Epidemiology	Billups, 2.2 Morris, 10 Baldree, 20	8/28 noon	8/28 ES		Delivered to ES 8/28
	8/2 Watkins Hearing Inserts	Morris, 10 Billups, 2.2 Baldree, 20	9/5 10 a.m.	9/5 noon		Called M.Gilmore, GC-13 (no comments) 9/5 3 p.m.
	HR 2662 - Contractor Accountability and Award System	Morris, 10 Baldree, 20 Richardson, 8	8/25 COB	8/28		To GC 8/29
	State Jurisdiction Over Federal Lands	Morris, 10 Baldree, 20	8/28 COB	8/29		Delivered to GC 8/29

Subcommittee Staff note: The names under "Lead" have been deleted. In all instances save "Stello Book/Issue Paper" the name is a contractor employee. In that instance, the columni identifies one DOE official and one contractor employee.

SMS RELEVANT EXPERIENCE ON CURRENT DOE PROJECTS

TASK	PROJECT					
	STRATEGIC PETROLEUM RESERVE	NAVAL PETROLEUM RESERVES	PLUTONIUM RECOVERY MODIFICATION PROJECT	OAK RIDGE TRANSPORTATION OPERATIONS	CHICAGO OPERATIONS OFFICE	FEED MATERIALS PRODUCTION
TRATEGIC PLANNING & ANALYSES						
• ISSUE IDENTIFICATION	X	X	X	X	X	X
• TASK FORCE MEETINGS	X	X			X	X
• TECHNICAL PAPERS		X	X			
• FORECASTING TRENDS ANAL. & ASSESS.	X	X	X	X	X	X
• IMPLICATION OF FEDERAL DEBT, SPENDING & NAT'L SECURITY	X	X				
ROGRAM PLANNING & ANALYSIS						
• ANALYSIS OF PLANNING PROCESS	X	X	X	X	X	X
• [illegible] AND RECOMMENDATION OF PROGRAM ANALYSIS REPORTING	X	X	X	X	X	X
• [illegible] AND PREPARATION OF TECHNICAL SECTIONS		X				
OLICY ASSESSMENT & ANALYSES						
• IMPACT OF PROGRAM	X	X	X		X	
• DRAFT LEGISLATIVE ISSUES						
ECHNICAL ASSESSMENT & ANALYSIS						
• [illegible] AND MAINTAIN SAFETY & [illegible] LONG RANGE PLANS		X				
PERSONNEL MANAGEMENT & ANAGEMENT SUPPORT SERVICES						
• TECHNICAL DOCUMENT AND REPORT PREPARATION	X	X	X	X	X	X
• [illegible] DOCUMENT CONTROL	X	X	X	X		

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BDM / LAI RELEVANT EXPERIENCE ON CURRENT DOE PROJECTS

TASK	PROJECT									
	DEFENSE WASTE	SAFEGUARDS & SECURITY	DP WEAPONS PLANNING	MILITARY APPLICATIONS	CIVILIAN WASTE	GREAT PLAINS / NPR	FOSSIL ENERGY	RICHLAND / BWIP	SPACE POWER	DP INTELLIGENCE
STRATEGIC PLANNING & ANALYSES										
• ISSUE IDENTIFICATION	X	X	X		X	X	X		X	X
• TASK FORCE MEETINGS	X				X		X	X	X	X
• TECHNICAL PAPERS	X	X			X		X	X	X	
• FORECASTING TRENDS ANAL & ASSESS	X									X
• APPLICATION OF FEDERAL DEBT SPENDING & NAT'L SECURITY	X		X			X				
PROGRAM PLANNING & ANALYSIS										
• ANALYSIS OF PLANNING PROCESS	X	X	X				X	X	X	
• OBSERVATION AND RECOMMENDATION OF PROGRAM ANALYSIS REPORTING			X		X					X
• DEVELOPMENT AND PREPARATION OF TECHNICAL SECTIONS	X	X	X	X	X	X	X	X	X	
POLICY ASSESSMENT & ANALYSES										
• IMPACT OF PROGRAM	X			X		X				X
• DRAFT LEGISLATIVE ISSUES	X				X		X			
CHNICAL ASSESSMENT & ANALYSIS										
• DEVELOP AND MAINTAIN SAFETY & HEALTH LONG RANGE PLANS	X					X	X	X		
PERSONNEL MANAGEMENT & MANAGEMENT SUPPORT SERVICES										
• TECHNICAL DOCUMENT AND REPORT PREPARATION	X	X	X	X	X	X	X	X	X	
• TECH DOCUMENT CONTROL				X			X			

98 064 0030

APPENDIX C-9

Hasc-3 txt

When this was received from DOE this draft had a note attached indicating a DOE official had produced this version

DRAFT STATEMENT OF

ADMIRAL JAMES D. WATKINS

SECRETARY OF ENERGY
BEFORE THE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

APRIL 3, 1989

Mr. Chairman and members of the committee, I am pleased to appear before your committee to discuss matters related to the Department of Energy's nuclear weapons complex, especially the many challenges that face us over the next few years.

For over 40 years, the statutory mission of this Department and its predecessor agencies has been to research, design, develop, test, and produce the nuclear warheads that form the Nation's nuclear deterrent. The Department has produced and maintained an effective nuclear deterrent that is the cornerstone of our national defense. Actions need to be taken now to assure that our capability to meet national security requirements can be maintained into the next century.

CHALLENGES

The Department faces serious challenges to its ability to contribute successfully to this Nation's security and economic well-being. These challenges include restoring the capability to produce tritium and special nuclear materials; updating management procedures; enhancing safety within the Department and its contractors; modernizing the nuclear weapons complex; and assuring that our operations are conducted in an environmentally sound manner.

DRAFT

APPENDIX C-9

When this was received from DOE it had a note attached indicating that this was the BDM version

DRAFT

STATEMENT OF
ADMIRAL JAMES D. WATKINS
SECRETARY OF ENERGY
BEFORE THE
DOE DEFENSE NUCLEAR FACILITIES PANEL
HOUSE OF REPRESENTATIVES

APRIL 3, 1989

Mr. Chairman, I appreciate the opportunity to appear before you today to discuss how I intend to address my responsibilities as Secretary with respect to the management and operation of this country's nuclear weapons complex.

The Department of Energy (DOE) is charged with developing and maintaining the Nation's energy security, contributing to the national defense, and ensuring America's continued scientific and technological leadership. Perhaps the most challenging of my new responsibilities will be in the area of national security. We need to ensure the safety of our aging production facilities, to guarantee that they operate in an environmentally-sound manner, and to clean up the waste materials we have generated over 40-plus years of nuclear operations. At the same time, we must assure a strong nuclear deterrent. DOE and its predecessor organizations have produced the warheads and maintained the effective nuclear deterrent that has long-served as the cornerstone of this country's national security policy.

Since being nominated by the President to serve as Secretary of Energy and throughout the nomination process, I have had the opportunity to read countless reports about problems at the Department, most of which have been building for years. I have also seen correspondence from concerned members of Congress and Governors about the failure of this agency to properly or

DRAFT

APPENDIX C-9

STATEMENT OF
ADMIRAL JAMES D. WATKINS
SECRETARY OF ENERGY
BEFORE THE
DOE DEFENSE NUCLEAR FACILITIES PANEL
HOUSE OF REPRESENTATIVES

APRIL 3, 1989

Mr. Chairman, I appreciate the opportunity to appear before you today to discuss how I intend to address my responsibilities as Secretary with respect to the management and operation of this country's nuclear weapons complex.

The Department of Energy (DOE) is charged with developing and maintaining the Nation's energy security, contributing to the national defense, and ensuring America's continued scientific and technological leadership. Perhaps the most challenging of my new responsibilities will be in the area of national security. We need to ensure the safety of our aging production facilities, to guarantee that they operate in an environmentally-sound manner, and to clean up the waste materials we have generated over 40-plus years of nuclear operations. At the same time, we must assure a strong nuclear deterrent. DOE and its predecessor organizations have produced the warheads and maintained the effective nuclear deterrent that has long-served as the cornerstone of this country's national security policy.

Since being nominated by the President to serve as Secretary of Energy and throughout the nomination process, I have had the opportunity to read countless reports about problems at the Department, most of which have been building for years. I have also seen correspondence from concerned members of Congress and Governors about the failure of this agency to properly or

A CONTRACTOR STATED THAT IT PREPARED

THE FOLLOWING TESTIMONY FOR THE SECRETARY OF ENERGY

My first act as Secretary of Energy was to send a message to all Federal and contractor employees outlining my immediate goals for the Department. Those which affect the nuclear weapons complex include:

- development of a 5-year plan which establishes specific budget objectives and goals for waste cleanup at each DOE site;
- institution of a strategy for the safe start-up of the Savannah River production reactors, including all waste management issues that go well beyond the Savannah River complex itself;
- elimination of the remaining obstacles to the opening of the Waste Isolation Pilot Plant (WIPP) in New Mexico; and,
- reforming the internal budget process in DOE and start working with the Office of Management and Budget and Congressional committees to establish uniform budget categories and definitions so that we can all understand where the dollars are going and what we are receiving in return for our investment.

Given April 3, 1989, before the House Armed Services Committee

A CONTRACTOR'S DESCRIPTION OF WORK

IT PERFORMED FOR THE DEPARTMENT OF ENERGY

EXHIBIT 15
EXAMPLES OF QUICK-RESPONSE TASKS

- *30 minutes* to prepare justification for the OBCS district cooling research program in response to Congressional inquiry (J. Kaminsky).
- *1 week* to prepare over 100 pages of presentation material (hardcopy and slides) for a major OBCS program review (Octoberfest) (J. Millhone).
- *1 day* to perform computer analysis of over 50 technical proposal evaluations for the OBCS Least Cost Utility Planning project (J. Holmes).
- *1 day* to complete an analysis of the proposed Scranton district heating renovation project. Justification in terms of research benefits was delivered for a controlled correspondence response to a Congressional inquiry (J. Millhone).
- *1 night* to prepare and integrate Section 4.0 of the NEPP-V preliminary document for all of Conservation (A. Streb).
- *3 days* to prepare comparative summaries of every potentially overlapping Conservation and Fossil Energy (coal utilization) project (A. Streb/W. Williams).
- *2 days* to plan and draft a major slide presentation by the DAS/C to the Interagency Power Group on Conservation's R&D in energy conversion; 3 days to deliver the complete color slide presentation (J. Brogan).
- *1 night* to draft the DAS/C's testimony on the Least Cost Utility Planning Initiative (A. Streb).
- *3 days* to draft the DAS/C's testimony on the Steel Industry Research Initiative (A. Streb).
- *3 hours* to analyze the content of the Conservation R&D budget used for demonstration in each year from 1978 through 1986 (A. Streb).
- *1 day* to hand-carry a detailed mark-up of the draft Secretary's Annual Report through every Conservation Office, resolving questions, correcting inconsistencies, and gaining approval for changes (A. Streb).
- *4 hours* to prepare a summary analysis of all completed Conservation project success stories (A. Streb).